15A Am. Jur. 2d Common Law Summary

American Jurisprudence, Second Edition | May 2021 Update

Common Law
Marie K. Pesando, J.D.

Correlation Table

Summary

Scope:
This article discusses the general aspects of the common law, including its definition, nature, origins, adoption, application, modification, and abrogation or repeal.

Treated Elsewhere:
Common-law crimes and application of common law to criminal matters, see Am. Jur. 2d, Criminal Law §§ 6 to 10

Common-law marriage, see Am. Jur. 2d, Marriage §§ 36 to 46

Federal common law, see Am. Jur. 2d, Federal Courts §§ 371 to 396

Judicial notice of law, see Am. Jur. 2d, Evidence §§ 112 to 137

Judicial precedents as binding or persuasive, see Am. Jur. 2d, Courts §§ 129 to 155

Pleading law of other jurisdictions, see Am. Jur. 2d, Pleading §§ 16 to 19

Presumptions as to law of foreign jurisdiction, see Am. Jur. 2d, Evidence §§ 271, 272

Statutory construction in light of common law, see Am. Jur. 2d, Statutes §§ 100, 101, 190 to 192

Research References:

Westlaw Databases

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I. In General

§ 1. Generally; definition

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West's Key Number Digest

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The common law, as frequently defined,[1] includes those rules of law which do not rest for their authority upon any express or positive statute or other written declaration,[2] but rather upon statements of principles found in the decisions of the courts.[3] Common law is the law of necessity,[4] and is applied in the absence of controlling statutory law.[5]

Although the common law is inseparably identified with the decisions of the courts, and can be determined only from such decisions,[6] it has also been said that the common law is not limited to published judicial precedent, but includes the entire wealth of received tradition and usage, fundamental principles, modes of reasoning, and the substance of its rules as illustrated by the reasons on which they are based, rather than the mere words in which they are expressed.[7] Thus, in a broader sense, the common law is the system of rules and declarations of principles from which our judicial ideas and legal definitions are derived,[8] and which are continually expanding.[9] It is not a codification of exact or inflexible rules for human conduct, for the redress of injuries, or for protection against wrongs,[10] but is rather the embodiment of broad and comprehensive unwritten principles, inspired by natural reason and an innate sense of justice, and adopted by common consent for the regulation and government of human affairs.[11] The great fundamental object and principle of the common law was the protection of the individual in the enjoyment of all his or her inherent and essential rights and to afford him or her a legal remedy for their invasion.[12]

The term "common law of England," frequently encountered in statutes and decisions establishing the same as the rule of decision in American jurisdictions, is not confined to the law as declared by English courts,[13] but means that general system of law which prevails in England and in the United States by adoption, as distinguished from the Roman or civil law system.[14] Blackstone's Commentaries have been accepted as a satisfactory exposition of the common law of England.[15]

Footnotes

1 Valentine v. Roberts, 1 Alaska 536, 1902 WL 562 (D. Alaska 1902); Kurnath v. State, 131 N.J.L. 161, 35 A.2d 880 (N.J. Ct. Err. & App. 1944).

2 State of Kan. v. State of Colo., 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907); Western Union Telegraph Co. v. Call Pub. Co., 181 U.S. 92, 21 S. Ct. 561, 45 L. Ed. 765 (1901); Baltimore & O.R. Co. v. Baugh, 149 U.S. 368, 13 S. Ct. 914, 37 L. Ed. 772 (1893); CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road Authority, 436 F.3d 541 (5th Cir. 2006); State v. Courchesne, 296 Conn. 622, 998 A.2d 1 (2010); Lockshin v. Semsker, 412 Md. 257, 987 A.2d 18 (2010).

Common law remains in force unless modified by constitution, statutes, judicial decisions, or conditions and wants of people. Rogers v. Meiser, 2003 OK 6, 68 P.3d 967 (Okla. 2003).

To the early writers on English law, the common law meant those rules which by custom, usage, and court decision, and not by act of Parliament, had come to be recognized as the law of the land. State v. Bass, 255 N.C. 42, 120 S.E.2d 580, 86 A.L.R.2d 259 (1961).

3 State of Kan. v. State of Colo., 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907); Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010); Burris Carpet Plus, Inc. v. Burris, 2010 ND 118, 785 N.W.2d 164 (N.D. 2010).

The "common law" is judicially created law that is developed on a case by case basis.
Mason v. State, 361 Ark. 357, 206 S.W.3d 869 (2005).

The common law consists of those principles and rules of action which have from time to time been adopted and acted upon by the courts when administering justice in cases not governed by any written law, arising out of the private disputes of individuals. Yazoo & M.V.R. Co. v. Scott, 108 Miss. 871, 67 So. 491 (1915).

The common law is comprised of that body of court decisions in the nonstatutory field to which the doctrine of stare decisis applies. Windust v. Department of Labor and Industries, 52 Wash. 2d 33, 323 P.2d 241 (1958).

4 Metropolitan Life Ins. Co. v. Strnad, 255 Kan. 657, 876 P.2d 1362 (1994).

5 Arkansas Democrat-Gazette v. Pulaski County Dist. Court, 375 Ark. 310, 289 S.W.3d 901 (2008); Kulp v. Timmons, 944 A.2d 1023 (Del. Ch. 2002); Hardick v. Homol, 795 So. 2d 1107 (Fla. Dist. Ct. App. 5th Dist. 2001); Humphreys v. State, 287 Ga. 63, 694 S.E.2d 316 (2010), cert. denied, 131 S. Ct. 599, 178 L. Ed. 2d 438 (2010); State v. Lawrence, 98 Idaho 399, 565 P.2d 989 (1977); Metropolitan Life Ins. Co. v. Strnad, 255 Kan. 657, 876 P.2d 1362 (1994); Smith v. Carbide and Chemicals Corp., 226 S.W.3d 52 (Ky. 2007); Jackson v. Dackman Co., 181 Md. App. 546, 956 A.2d 861 (2008); Dawe v. Dr. Reuven Bar-Levav & Associates, P.C., 485 Mich. 20, 780 N.W.2d 272 (2010); Sunburst School Dist. No. 2 v. Texaco, Inc., 2007 MT 183, 338 Mont. 259, 165 P.3d 1079, 223 Ed. Law Rep. 368 (2007); In re Estate of Conley, 2008 ND 148, 753 N.W.2d 384 (N.D. 2008); Toste Farm Corp. v. Hadbury, Inc., 798 A.2d 901 (R.I. 2002); State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000); Egbert v. Nissan Motor Co., Ltd., 2010 UT 8, 228 P.3d 737 (Utah 2010); Senear v. Daily Journal-American, a Division of Longview Pub. Co., 97 Wash. 2d 148, 641 P.2d 1180 (1982); Miller v. Jeffrey, 213 W. Va. 41, 576 S.E.2d 520 (2002); Gibson v. Overnite Transp. Co., 267 Wis. 2d 429, 2003 WI App 210, 671 N.W.2d 388 (Ct. App. 2003).

The common law, where it has not been expressly abrogated by statute, is as much a part of the law of the state as the statutes themselves. Foster Wheeler Energy Corp. v. LSP Equipment, LLC, 346 Ill. App. 3d 753, 282 Ill. Dec. 69, 805 N.E.2d 688 (2d Dist. 2004).

6 Whitehorn v. Dickerson, 419 S.W.2d 713 (Mo. Ct. App. 1967); Kresha v. Kresha, 216 Neb. 377, 344 N.W.2d 906 (1984); In re Parentage of L.B., 121 Wash. App. 460, 89 P.3d 271 (Div. 1 2004), aff'd in part, rev'd in part on other grounds, 155 Wash. 2d 679, 122 P.3d 161 (2005).

Common-law rules are court-made rules. Spokane Methodist Homes, Inc. v. Department of Labor and Industries, 81 Wash. 2d 283, 501 P.2d 589 (1972).

The common law consists of judicial opinions, which are the only evidence of what is common law. In re Davis' Estate, 134 N.J. Eq. 393, 35 A.2d 880 (Ct. Err. & App. 1944).

7 Housing Finance and Development Corp. v. Ferguson, 91 Haw. 81, 979 P.2d 1107 (1999).

8 Moore v. U.S., 91 U.S. 270, 23 L. Ed. 346, 1875 WL 17916 (1875).

The common law, as adopted by the legislature, is a system of elementary rules and general judicial declarations of principles. Ney v. Yellow Cab Co., 2 Ill. 2d 74, 117 N.E.2d 74, 51 A.L.R.2d 624 (1954).

9 § 2.

10 Dimick v. Schiedt, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603, 95 A.L.R. 1150 (1935); Halberg v. Young, 41 Haw. 634, 59 A.L.R.2d 445 (1957); Ketelson v. Stilz (State Report Title: Ketelsen v. Stilz), 184 Ind. 702, 111 N.E. 423 (1916); Pyle v. Waechter, 202 Iowa 695, 210 N.W. 926, 49 A.L.R. 557 (1926); Sullivan v. Minneapolis & R. R. Ry. Co., 121 Minn. 488, 142 N.W. 3 (1913); State ex rel. City of Minneapolis v. St. Paul, M. & M.R. Co., 98 Minn. 380, 108 N.W. 261 (1906), aff'd, 214 U.S. 497, 29 S. Ct. 698, 53 L. Ed. 1060 (1909).

11 Halberg v. Young, 41 Haw. 634, 59 A.L.R.2d 445 (1957); Sullivan v. Minneapolis & R. R. Ry. Co., 121 Minn. 488, 142 N.W. 3 (1913).

As distinguished from statutory or written law, "common law" embraces that great body of unwritten law founded upon general custom, usage, or common consent, and based upon natural justice or reason; it is custom long acquiesced in or sanctioned by immemorial usage and judicial decision. Samsel v. Wheeler Transport Services, Inc., 246 Kan. 336, 789 P.2d 541 (1990) (disapproved of on other grounds by, Bair v. Peck, 248 Kan. 824, 811 P.2d 1176 (1991)).

12 Jews For Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008).

13 State v. Egan, 287 So. 2d 1 (Fla. 1973).

14 Ketelson v. Stilz (State Report Title: Ketelsen v. Stilz), 184 Ind. 702, 111 N.E. 423 (1916); Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903); Cowhick v. Shingle, 5 Wyo. 87, 37 P. 689 (1894).

The term "common law of England" has been interpreted to mean the common law declared by the courts of the several states, and not the common law in force in England at the time of the legislative adoption. Grigsby v. Reib, 105 Tex. 597, 153 S.W. 1124 (1913).

The common law of England, as adopted in this country, means that body of jurisprudence as applied and modified by the courts of this country up to the time it becomes a rule of decision in the states applying it. Gas Products Co. v. Rankin, 63 Mont. 372, 207 P. 993, 24 A.L.R. 294 (1922).

15 Bloom v. State of Ill., 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968).

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I. In General

§ 2. Expansion and development

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West's Key Number Digest

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The common law is not static,[1] but is rather a dynamic and growing thing.[2] By definition, "common law" is law subject to continuing judicial development.[3] It is to be derived from the interstices of prior opinions and a well-considered judgment of what is best for the community.[4] The common law has an inherent capacity for growth and change.[5] Its development is informed by the application of reason and common sense[6] to the changing conditions of society,[7] or to the social needs of the community which it serves.[8] It is constantly expanding and developing in keeping with advancing civilization and the new conditions and progress of society, and adapting itself to the gradual change of trade, commerce, arts, inventions, and the needs of the country.[9] Indeed the genius of the Anglo-American common law is its readiness to proliferate needed remedies for newly evident wrongs and to apply existing remedies with liberality to new aspects of recognized wrongs.[10] It is said that public policy is the dominant factor in the molding and remolding of common-law principles to the end that they may soundly serve the public welfare and the true interests of justice.[11] Thus, in judging how to apply the common law to new circumstances, generally, a court considers principles of fairness and public policy and the social realities of the day.[12] The fact that no case remotely resembling the one at issue is uncovered does not paralyze the common-law system, which is endowed with judicial inventiveness to meet new situations.[13] Novelty of an asserted common-law cause of action and lack of common-law precedent are no reasons for denying its existence, because the common law does not consist of absolute, fixed, and inflexible rules; rather, its principles have been determined by the social needs of the community and have changed with changes in such needs.[14] The growth and adaptation of the common law to contemporary concerns should not, however, impose impractical burdens or impossible duties.[15]

Although it has been said that the expansion of the common law is inherently incremental in nature and calls for the devising of rules that do not stray too far from the existing regime,[16] it has also been noted that social and economic changes giving rise to change in the common law are not always purely evolutionary.[17]

Footnotes

1 Wholey v. Sears Roebuck, 370 Md. 38, 803 A.2d 482 (2002); Horizon/CMS Healthcare Corporation v. Auld, 34 S.W.3d 887 (Tex. 2000); Simonetta v. Viad Corp., 137 Wash. App. 15, 151 P.3d 1019 (Div. 1 2007), rev'd on other grounds, 165 Wash. 2d 341, 197 P.3d 127 (2008); State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381 (2003).

2 Mason v. State, 361 Ark. 357, 206 S.W.3d 869 (2005); Goodrich v. Waterbury Republican-American, Inc., 188 Conn. 107, 448 A.2d 1317 (1982); State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381 (2003).

The common law is not a stagnant pool, but a moving stream. Hilen v. Hays, 673 S.W.2d 713 (Ky. 1984).

The common law is not immutable, unable to respond to change in society and technology. Moning v. Alfono, 400 Mich. 425, 254 N.W.2d 759 (1977).

The essence of the common law is its adaptability to changing circumstances. Atlantic City Convention Center Authority v. South Jersey Pub. Co., Inc., 135 N.J. 53, 637 A.2d 1261 (1994).

3 State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381 (2003).

4 Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991).

5 State v. Skakel, 276 Conn. 633, 888 A.2d 985 (2006); Handeland v. Brown, 216 N.W.2d 574 (Iowa 1974); City of Louisville v. Chapman, 413 S.W.2d 74 (Ky. 1967); Beech Grove Inv. Co. v. Civil Rights Com'n, 380 Mich. 405, 157 N.W.2d 213 (1968); Brown v. City of Omaha, 183 Neb. 430, 160 N.W.2d 805 (1968); State v. International Federation of Professional and Technical Engineers, Local 195, 169 N.J. 505, 780 A.2d 525 (2001); Lembke v. Unke, 171 N.W.2d 837 (N.D. 1969).

The common law is a system of law not formalized by legislative action and not solidified, but capable of growth and development at the hands of judges. Linkins v. Protestant Episcopal Cathedral Foundation of the District of Columbia, 187 F.2d 357, 28 A.L.R.2d 521 (D.C. Cir. 1950).

In commenting upon the inherent capacity of the common law for change, the courts have pointed out that it needs no statute to change, but abrogates itself. Ketelson v. Stilz (State Report Title: Ketelsen v. Stilz), 184 Ind. 702, 111 N.E. 423 (1916); In re Lewis' Estate, 148 Neb. 592, 28 N.W.2d 427 (1947).

6 Hardick v. Homol, 795 So. 2d 1107 (Fla. Dist. Ct. App. 5th Dist. 2001); Simonetta v. Viad Corp., 137 Wash. App. 15, 151 P.3d 1019 (Div. 1 2007), rev'd on other grounds, 165 Wash. 2d 341, 197 P.3d 127 (2008).

7 Goodrich v. Waterbury Republican-American, Inc., 188 Conn. 107, 448 A.2d 1317 (1982); State v. International Federation of Professional and Technical Engineers, Local 195, 169 N.J. 505, 780 A.2d 525 (2001); State v. Horne, 282 S.C. 444, 319 S.E.2d 703 (1984); Horizon/CMS Healthcare Corporation v. Auld, 34 S.W.3d 887 (Tex. 2000); State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381 (2003).

8 Larsen v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968); U.S. v. Schoefield, 465 F.2d 560 (D.C. Cir. 1972); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Hardick v. Homol, 795 So. 2d 1107 (Fla. Dist. Ct. App. 5th Dist. 2001); Kreitz v. Behrensmeyer, 149 Ill. 496, 36 N.E. 983 (1894); In re Adoption of M.M.G.C., 785 N.E.2d 267 (Ind. Ct. App. 2003); Aetna Ins. Co. v. Commonwealth, 106 Ky. 864, 21 Ky. L. Rptr. 503, 51 S.W. 624 (1899); Sullivan v. Minneapolis & R. R. Ry. Co., 121 Minn. 488, 142 N.W. 3 (1913); Tuttle v. Buck, 107 Minn. 145, 119 N.W. 946 (1909); Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903); Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007); Hewitt Logging Co. v. Northern Pac. Ry. Co., 97 Wash. 597, 166 P. 1153, 3 A.L.R. 198 (1917); Thomas ex rel. Gramling v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523 (2005).

The common law, while in most respects the "soul of reason," is not always arrived at by an application of the rules of logic, for its basis in the last analysis is nothing more or less than expediency. Yazoo & M.V.R. Co. v. Scott, 108 Miss. 871, 67 So. 491 (1915).

9 Dimick v. Schiedt, 293 U.S. 474, 55 S. Ct. 296, 79 L. Ed. 603, 95 A.L.R. 1150 (1935); Funk v. U.S., 290 U.S. 371, 54 S. Ct. 212, 78 L. Ed. 369, 93 A.L.R. 1136 (1933); Collins v. United Mine Workers of America Welfare and Retirement Fund of 1950, 298 F. Supp. 964 (D. D.C. 1969), judgment aff'd, 439 F.2d 494 (D.C. Cir. 1970); City of Tombstone v. Macia, 30 Ariz. 218, 245 P. 677, 46 A.L.R. 828 (1926); In re Beyea's Estate, 24 Del. Ch. 436, 15 A.2d 177 (Orphans' Ct. 1940); In re Chun Quan Yee Hop's Estate, 52 Haw. 40, 469 P.2d 183 (1970); Ney v. Yellow Cab Co., 2 Ill. 2d 74, 117 N.E.2d 74, 51 A.L.R.2d 624 (1954); Kreitz v.

Behrensmeyer, 149 Ill. 496, 36 N.E. 983 (1894); Perkins v. State, 252 Ind. 549, 251 N.E.2d 30 (1969); Pyle v. Waechter, 202 Iowa 695, 210 N.W. 926, 49 A.L.R. 557 (1926); Clark v. Allaman, 71 Kan. 206, 80 P. 571 (1905); Com. v. Gallo, 275 Mass. 320, 175 N.E. 718, 79 A.L.R. 1380 (1931); State ex rel. Schlueter Mfg. Co. v. Beck, 337 Mo. 839, 85 S.W.2d 1026 (1935); La Plant v. E. I. Du Pont De Nemours & Co., 346 S.W.2d 231 (Mo. Ct. App. 1961); State ex rel. Johnson v. Tautges, Rerat & Welch, 146 Neb. 439, 20 N.W.2d 232 (1945); Concord Mfg. Co. v. Robertson, 66 N.H. 1, 25 A. 718 (1890); Taylor v. New Jersey Highway Authority, 22 N.J. 454, 126 A.2d 313, 62 A.L.R.2d 1211 (1956); Ladner v. Siegel, 298 Pa. 487, 148 A. 699, 68 A.L.R. 1172 (1930); Saltsburg Gas Co. v. Borough of Saltsburg, 138 Pa. 250, 20 A. 844 (1890); Matarese v. Matarese, 47 R.I. 131, 131 A. 198, 42 A.L.R. 1360 (1925); Cleveland v. BDL Enterprises, Inc., 2003 SD 54, 663 N.W.2d 212 (S.D. 2003); Sovereign Camp, W.O.W., v. Boden, 117 Tex. 229, 1 S.W.2d 256, 61 A.L.R. 682 (1927).

Common law is flexible enough to permit modification of one of its doctrines when necessary to avoid producing an anomalous result because of change in commercial practice.

Travelers Cas. and Sur. Co. of America v. Wells Fargo Bank N.A., 374 F.3d 521, 53 U.C.C. Rep. Serv. 2d 695 (7th Cir. 2004).

10 Community Hospital Group, Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 384 N.J. Super. 251, 894 A.2d 702 (App. Div. 2006).

11 Senna v. Florimont, 196 N.J. 469, 958 A.2d 427 (2008); State v. Hand, 101 N.J. Super. 43, 242 A.2d 888 (County Ct. 1968).

12 Senna v. Florimont, 196 N.J. 469, 958 A.2d 427 (2008).

13 Florida Trailer & Equipment Co. v. Deal, 284 F.2d 567, 94 A.L.R.2d 638 (5th Cir. 1960).

14 Becker v. Mayo Foundation, 737 N.W.2d 200 (Minn. 2007).

15 Hensley v. Montgomery County, 25 Md. App. 361, 334 A.2d 542, 94 A.L.R.3d 1148 (1975).

16 McClure v. Life Ins. Co. of North America, 84 F.3d 1129 (9th Cir. 1996); Hedges v. Hedges, 2002 OK 92, 66 P.3d 364 (Okla. 2002); State v. Lead Industries, Ass'n, Inc., 951 A.2d 428 (R.I. 2008); Adkins v. Sky Blue, Inc., 701 P.2d 549 (Wyo. 1985).

Although Supreme Court recognizes the need for incremental changes in the common law, it is particularly loath to indulge in the abrupt abandonment of settled principles and distinctions that have been carefully developed over the years. State v. Lead Industries, Ass'n, Inc., 951 A.2d 428 (R.I. 2008).

The persistent movement of the common law toward satisfying the needs of the times is soundly marked by gradualness. Falcone v. Middlesex County Medical Soc., 34 N.J. 582, 170 A.2d 791, 89 A.L.R.2d 952 (1961).

Fundamental changes in jurisprudence must be brought about sparingly and with deliberation. Aranson v. Schroeder, 140 N.H. 359, 671 A.2d 1023 (1995).

Predictability is an important component of the common law system. Hill v. Mayall, 886 P.2d 1188, 26 U.C.C. Rep. Serv. 2d 1182 (Wyo. 1994).

17 State ex rel. Schlueter Mfg. Co. v. Beck, 337 Mo. 839, 85 S.W.2d 1026 (1935).

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II. Origins

§ 3. Generally

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West's Key Number Digest

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The common law, as it exists in the United States, is of English origin. Founded on ancient local rules and customs and in feudal times, it began to evolve in the King's courts and was eventually molded into the viable principles through which it continues to operate.[1] The common law migrated to this continent with the first English colonists,[2] who claimed the system as their birthright;[3] it continued in full force in the 13 original colonies until the American Revolution,[4] at which time it was adopted by each of the states as well as the national government of the new nation.[5] As new states were formed, they too adopted, by express provision or force of judicial decision, the principles of the common law insofar as applicable to their conditions.[6] Where new states were formed out of a territory previously a part of some other state, the common law of the original state was sometimes adopted.[7]

Where, however, states were formed from acquired territory in which other systems of law had originally prevailed, it became necessary to determine by legislative enactment or judicial decision which system should prevail.[8] In these states the common law has generally been adopted by statute or constitutional provision,[9] although civil-law principles continue to influence the course of jurisprudence in some such states,[10] at least when the terms by which the common law was adopted do not preclude their application, and provided that such principles are applicable to custom or enactment adopted from the former law and are not inconsistent with currently prevailing law and custom.[11]

Observation:

The common law, which stands legislatively declared to be a constituent part of the state's body of law, need not be drawn exclusively from English precedent, but may also be fashioned by utilizing other sources, including legal norms taken from common-law jurisprudence of sister states.[12]

Footnotes

1 Quinn v. Phipps, 93 Fla. 805, 113 So. 419, 54 A.L.R. 1173 (1927).

2 State of Kan. v. State of Colo., 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907); Harkness v. Sears, 26 Ala. 493, 1855 WL 339 (1855); Hageman v. Vanderdoes, 15 Ariz. 312, 138 P. 1053 (1914); State v. Courchesne, 296 Conn. 622, 998 A.2d 1 (2010); Gatton v. Chicago, R.I. & P. Ry. Co., 95 Iowa 112, 63 N.W. 589 (1895); Clark v. Allaman, 71 Kan. 206, 80 P. 571 (1905); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889); Crump v. Morgan, 38 N.C. 91, 3 Ired. Eq. 91, 1843 WL 1025 (1843); McKennon v. Winn, 1893 OK 16, 1 Okla. 327, 33 P. 582 (1893); Commonwealth v. Lehigh Valley R. Co., 165 Pa. 162, 30 A. 836 (1895); Bloomfield v. Brown, 67 R.I. 452, 25 A.2d 354, 141 A.L.R. 170 (1942); Moss v. State, 131 Tenn. 94, 173 S.W. 859 (1915).
A common-law rule unchanged when the first settlers emigrated to America became a part of this country's common law, whether the rule had its origin in custom or statute. Friend v. Childs Dining Hall Co., 231 Mass. 65, 120 N.E. 407, 5 A.L.R. 1100 (1918).
As to the extent of the common law received into this country, see § 12.

3 Wheaton v. Peters, 33 U.S. 591, 8 L. Ed. 1055, 1834 WL 3830 (1834); Van Ness v. Pacard, 27 U.S. 137, 7 L. Ed. 374, 1829 WL 3179 (1829); Harkness v. Sears, 26 Ala. 493, 1855 WL 339 (1855); Gatton v. Chicago, R.I. & P. Ry. Co., 95 Iowa 112, 63 N.W. 589 (1895); Com. v. York, 50 Mass. 93, 9 Met. 93, 1845 WL 4042 (1845); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889); Crump v. Morgan, 38 N.C. 91, 3 Ired. Eq. 91, 1843 WL 1025 (1843); Commonwealth v. Lehigh Valley R. Co., 165 Pa. 162, 30 A. 836 (1895).

4 Gatton v. Chicago, R.I. & P. Ry. Co., 95 Iowa 112, 63 N.W. 589 (1895).

5 § 11.

6 Western Union Telegraph Co. v. Call Pub. Co., 181 U.S. 92, 21 S. Ct. 561, 45 L. Ed. 765 (1901); Shively v. Bowlby, 152 U.S. 1, 14 S. Ct. 548, 38 L. Ed. 331 (1894); Kroeger v. Twin Buttes R. Co., 13 Ariz. 348, 114 P. 553 (1911), aff'd, 14 Ariz. 269, 127 P. 735 (1912); Clark v. Allaman, 71 Kan. 206, 80 P. 571 (1905); McKennon v. Winn, 1893 OK 16, 1 Okla. 327, 33 P. 582 (1893).
In its earliest Constitution, by way of the ordinances of 1787 for the government of the Northwest Territory, Michigan adopted what was in essence the English common law in existence on that date. Phillips v. Mirac, Inc., 470 Mich. 415, 685 N.W.2d 174 (2004).

7 Ray v. Sweeney, 77 Ky. 1, 14 Bush 1, 1878 WL 7978 (1878); Lathrop v. Commercial Bank, 38 Ky. 114, 8 Dana 114, 1839 WL 2538 (1839); Moss v. State, 131 Tenn. 94, 173 S.W. 859 (1915); McCorry v. King's Heirs, 22 Tenn. 267, 3 Hum. 267, 1842 WL 1936 (1842); Powell v. Sims, 5 W. Va. 1, 1871 WL 2728 (1871).

8 Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. U.S., 136 U.S. 1, 10 S. Ct. 792, 34 L. Ed. 478 (1890); Wheeler v. Smith, 50 U.S. 55, 9 How. 55, 13 L. Ed. 44, 1850 WL 6946 (1850); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Ex parte Beville, 58 Fla. 170, 50 So. 685 (1909); Clark v. Allaman, 71 Kan. 206, 80 P. 571 (1905); Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903).

9 McDaniel v. Cummings, 83 Cal. 515, 23 P. 795 (1890); Hale v. Hollon, 90 Tex. 427, 39 S.W. 287 (1897).

10 Miller v. Letzerich, 121 Tex. 248, 49 S.W.2d 404, 85 A.L.R. 451 (1932) (statutes in force in Texas before the introduction of the common law must be construed in the light of the Mexican civil law).

The civil law of Spain is not in force in Florida except as portions of such civil law may be incorporated in statutory enactments. Menendez v. Rodriguez, 106 Fla. 214, 143 So. 223 (1932).

11 Pendleton v. Brown, 25 Ariz. 604, 221 P. 213 (1923), holding that while the principle of community property was immediately traceable to Spanish law, the institution of marriage and the consequences following a violation of marital rights are governed and controlled by the principles of the common law, the statutory law of the state which has been inspired by those principles, and judicial interpretation of those laws; in other words, that the community property statutes must be interpreted according to the principles of the common law.

12 In re Estate of Bleeker, 2007 OK 68, 168 P.3d 774 (Okla. 2007).

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§ 4. English common-law and judicial decisions

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West's Key Number Digest

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The common law of England is the basic component of the common law as adopted by American courts.[1] However, the judicial decisions of the courts of England are not deemed to be a part of the common law, but merely expositions thereof. Hence, the courts of this country, in order to ascertain the principles and rules of the common law, may look to the decisions of other states of the Union, as well as to those of the English courts.[2] Furthermore, the courts of this country are not required to adhere to the decisions of the English common-law courts, regardless of whether they were rendered prior to,[3] or after,[4] the American Revolution. This does not mean, however, that such decisions and other authorities may not properly be considered as indicative of what the common law was at any time in the past or what it may be at present.[5]

CUMULATIVE SUPPLEMENT

Cases:

The primary guide in determining whether a state rule about criminal liability violates due process is historical practice, and in assessing that practice, the Supreme Court looks primarily to eminent common-law authorities, as well as to early English and American judicial decisions. U.S. Const. Amend. 14. Kahler v. Kansas, 140 S. Ct. 1021 (2020).

[END OF SUPPLEMENT]

Footnotes

1 § 10.

2 Seymour v. McAvoy, 121 Cal. 438, 53 P. 946 (1898); State v. Egan, 287 So. 2d 1 (Fla. 1973); Ketelson v. Stilz (State Report Title: Ketelsen v. Stilz), 184 Ind. 702, 111 N.E. 423 (1916); Dickey v. Volker, 321 Mo. 235, 11 S.W.2d 278, 62 A.L.R. 858 (1928); Leyson v. Davis, 17 Mont. 220, 42 P. 775 (1895), dismissed, 170 U.S. 36, 18 S. Ct. 500, 42 L. Ed. 939 (1898); State v. Cleveland & P. R. Co., 94 Ohio St. 61, 113 N.E. 677 (1916).

3 State v. Courchesne, 296 Conn. 622, 998 A.2d 1 (2010); Dickey v. Volker, 321 Mo. 235, 11 S.W.2d 278, 62 A.L.R. 858 (1928); Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903); Loudon v. Loudon, 114 N.J. Eq. 242, 168 A. 840, 89 A.L.R. 904 (Ct. Err. & App. 1933); State v. Wilson, 162 S.C. 413, 161 S.E. 104, 81 A.L.R. 580 (1931).

4 Dudrow v. King, 117 Md. 182, 83 A. 34 (1912); Johnson v. Union Pac. Coal Co., 28 Utah 46, 76 P. 1089 (1904).

5 Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Boardman v. Scott, 102 Ga. 404, 30 S.E. 982 (1897); Kreitz v. Behrensmeyer, 149 Ill. 496, 36 N.E. 983 (1894); Dudrow v. King, 117 Md. 182, 83 A. 34 (1912); Com. v. York, 50 Mass. 93, 9 Met. 93, 1845 WL 4042 (1845); Dickey v. Volker, 321 Mo. 235, 11 S.W.2d 278, 62 A.L.R. 858 (1928); Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903); Horace Waters & Co. v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907) (overruled on other grounds by, Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973)); Johnson v. Union Pac. Coal Co., 28 Utah 46, 76 P. 1089 (1904).

English decisions on questions of workers' compensation law are entitled to great weight. State v. Clearwater Timber Co., 47 Idaho 295, 274 P. 802, 66 A.L.R. 1396 (1929) (overruled in part on other grounds by, Jaynes v. Potlatch Forests, 75 Idaho 297, 271 P.2d 1016, 50 A.L.R.2d 356 (1954)).

English decisions rendered prior to the Revolutionary War must be clear and unequivocal in order to be binding as common law. Ex parte Beville, 58 Fla. 170, 50 So. 685 (1909).

In Brooks v. Ready Mix Concrete Co., 94 Ga. App. 791, 96 S.E.2d 213 (1956), the court said that if there had been a ruling by a common-law court in England prior to May 14, 1776, recognizing a distinction between direct and consequential blasting injuries, it would be bound thereby.

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§ 5. English statutes

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English statutes enacted before the emigration of the American colonists constituted a part of the common law on its adoption in this country, so far as they were not merely local in character or inapplicable to American institutions and conditions.[1] While some courts hold that such ancient statutes are not strictly a part of the common law,[2] they are nevertheless part of our judicial heritage and should be interpreted and applied in that light.[3] However, English statutes passed subsequently to the adoption of the common law in this country form no part of our common law.[4] States, in adopting the common law of England, also adopt the construction which English courts have, prior to the time of adoption, placed upon a statute forming part of such common law. The state, however, may thereafter construe the common law and its supplementary English statutes as it pleases, and such construction then becomes the common law of the particular state construing it.[5]

Footnotes

1 U.S. v. Reid, 53 U.S. 361, 12 How. 361, 13 L. Ed. 1023, 1851 WL 6643 (1851) (overruled in part on other grounds by, Rosen v. U.S., 245 U.S. 467, 38 S. Ct. 148, 62 L. Ed. 406 (1918)); Scott v. Lunt's Adm'r, 32 U.S. 596, 8 L. Ed. 797, 1833 WL 4184 (1833); Levy's Lessee v. McCartee, 31 U.S. 102, 8 L. Ed. 334, 1832 WL 3449 (1832); Doe ex dem. Patterson v. Winn, 30 U.S. 233, 8 L. Ed. 108, 1831 WL 3982 (1831); Farrington v. Stoddard, 115 F.2d 96, 131 A.L.R. 1344 (C.C.A. 1st Cir. 1940); Ex parte Thompson, 228 Ala. 113, 152 So. 229, 107 A.L.R. 671 (1933); People v. One 1941 Chevrolet Coupe, 37 Cal. 2d 283, 231 P.2d 832 (1951); Moore v. Purse Seine Net, 18 Cal. 2d 835, 118 P.2d 1 (1941), judgment aff'd, 318 U.S. 133, 63 S. Ct. 499, 87 L. Ed. 663 (1943); Gould v. State, 99 Fla. 662, 127 So. 309, 69 A.L.R. 699 (1930); Ingram-Dekle Lumber Co. v. Geiger, 71 Fla. 390, 71 So. 552 (1916); Flint River Steamboat Co. v. Foster, 5 Ga. 194, 1848 WL 1547 (1848); Davis v. Atlanta Gas Light Co., 82 Ga. App. 460, 61 S.E.2d 510 (1950); People ex rel. German Ins. Co. v. Williams, 145 Ill. 573, 33 N.E. 849 (1893); In re Sanderson, 289 Mich. 165, 286 N.W. 198 (1939); Baker's Adm'r v. Crandall, 78 Mo. 584, 1883 WL 9444 (1883); State v. Moore, 26 N.H. 448, 1853 WL 2441

(1853); Loudon v. Loudon, 114 N.J. Eq. 242, 168 A. 840, 89 A.L.R. 904 (Ct. Err. & App. 1933); Morris' Lessee v. Vanderen, 1 U.S. 64, 1 Dall. 64, 1 L. Ed. 38, 1782 WL 44 (Pa. 1782); Buchanan v. Crites, 106 Utah 428, 150 P.2d 100, 154 A.L.R. 167 (1944); Spaulding v. Chicago & N. W. Ry. Co., 30 Wis. 110, 1872 WL 3093 (1872); State v. Foster, 5 Wyo. 199, 38 P. 926 (1895); Cowhick v. Shingle, 5 Wyo. 87, 37 P. 689 (1894).

Legislative adoption of the common law refers to the whole body of the jurisprudence as it stood influenced by statute at the time of the passage of the statute of adoption. Martin v. Superior Court of California in and for Alameda County, 176 Cal. 289, 168 P. 135 (1917).

The English Statute of Charitable Uses is in force in New Mexico. Mountain View Homes, Inc. v. State Tax Commission, 77 N.M. 649, 427 P.2d 13 (1967).

2 McCormick Harvester Mach. Co. v. Willan, 63 Neb. 391, 88 N.W. 497 (1901).

No English statute, however ancient, is a part of the common law of Mississippi. Martin v. State, 190 Miss. 32, 199 So. 98 (1940).

3 Manoukian v. Tomasian, 237 F.2d 211 (D.C. Cir. 1956) (stating that British statutes antedating the Declaration of Independence have almost universally been regarded as having the effect of judicial precedent, rather than legislative enactment, and are applied by American courts like the common law, rather than like enactments of American legislatures).

4 Pedersen v. Logan Square State & Sav. Bank, 377 Ill. 408, 36 N.E.2d 732 (1941) (a statute enacted subsequently to the fourth year of James I is not part of the common law of Illinois); Blackett v. Ziegler, 153 Iowa 344, 133 N.W. 901 (1911); State v. District Court of Fourth Judicial Dist. in and for Ravalli County, 52 Mont. 46, 155 P. 278 (1916).

As to the effective date of adoption of the common law by the various states, see § 11.

5 Moore v. Backus, 78 F.2d 571, 101 A.L.R. 379 (C.C.A. 7th Cir. 1935); Davis v. Atlanta Gas Light Co., 82 Ga. App. 460, 61 S.E.2d 510 (1950).

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§ 6. Equity

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The principles of equity are part of the common law adopted in this country.[1] In its broadest sense, the term "common law" includes those doctrines of equity jurisprudence which have not been expressed in legislative enactments.[2]

Footnotes

1 Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. U.S., 136 U.S. 1, 10 S. Ct. 792, 34 L. Ed. 478 (1890); Vidal v. Girard's Ex'rs, 43 U.S. 127, 2 How. 127, 11 L. Ed. 205, 1844 WL 5960 (1844); Martin v. Superior Court of California in and for Alameda County, 176 Cal. 289, 168 P. 135 (1917); Katz v. Walkinshaw, 141 Cal. 116, 70 P. 663 (1902), rev'd on other grounds, 141 Cal. 116, 74 P. 766 (1903); Continental Guaranty Corporation v. People's Bus Line, 31 Del. 595, 117 A. 275 (Super. Ct. 1922); Bloomfield State Bank v. Miller, 55 Neb. 243, 75 N.W. 569 (1898); State v. Saunders, 66 N.H. 39, 25 A. 588 (1889); In re Pennock's Estate, 20 Pa. 268, 1853 WL 6273 (1853).
By judicial construction, the Florida common law includes the substantive principles of equity as well as of law. Soud v. Hike, 56 So. 2d 462 (Fla. 1952).

2 Campbell v. Colorado Coal & Iron Co., 9 Colo. 60, 10 P. 248 (1886).

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II. Origins

§ 7. Law merchant

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West's Key Number Digest

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The law merchant has long been recognized as a part of the common law.[1] It is defined as the law regarding the negotiability of commercial paper as such law developed before the enactment of any statute on the subject and as originated under long-established custom and usage.[2]

With regard to admiralty and maritime jurisdiction, the first Congress, in the Judiciary Act of 1789, declared such jurisdiction of the federal court to be exclusive, yet saved to suitors in all cases "the right of a common-law remedy, where the common law is competent to give it."[3]

Footnotes

1 Phipps v. Harding, 70 F. 468 (C.C.A. 7th Cir. 1895); Donegan v. Wood, 49 Ala. 242, 1873 WL 809 (1873); Barlow v. Lambert, 28 Ala. 704, 1856 WL 523 (1856); First Nat. Bank of Pomeroy, Iowa v. McCullough, 50 Or. 508, 93 P. 366 (1908); Forepaugh v. Delaware, L. & W. R. Co., 128 Pa. 217, 18 A. 503 (1889); Nash v. Harrington, 2 Aik. 9, 1826 WL 1228 (Vt. 1826); State v. Stout, 142 W. Va. 182, 95 S.E.2d 639, 59 A.L.R.2d 1154 (1956).
The law merchant, which developed out of international trade, is a composition of the rules of law and business conduct of many nations, and has become, more than any other branch of the law, international. Although these rules may, in some instances, seem strange to those who are versed in the principles of common law, the principles of the law merchant have been accepted in the English common law for many generations. Miller v. Miller, 296 S.W.2d 684, 65 A.L.R.2d 589 (Ky. 1956).

2 Kirkpatrick v. Lebus, 184 Ky. 139, 211 S.W. 572 (1919).

The lex mercatoria, the law merchant, is a part of the common law and governs bills of exchange, but the lex mercatoria did not, at common law, apply to promissory notes. Gates v. Fauvre, 74 Ind. App. 382, 119 N.E. 155 (1918).

3 Am. Jur. 2d, Admiralty § 95.

Where a state court has concurrent jurisdiction with an admiralty court under this "saving to suitors" clause, and the action is brought in the state court, the substantive law to be applied is that which would have been applicable had the action been brought in the admiralty court; but the state law applies in procedural matters. Am. Jur. 2d, Admiralty § 114.

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II. Origins

§ 8. Christianity

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West's Key Number Digest

West's Key Number Digest, Common Law 4

Although it has been said that general Christianity is, and always has been, a part of the common law,[1] the courts have usually regarded it as not controlling,[2] choosing to base their decisions, in the controversies wherein the question has been raised, upon the broad general principle of the common law upholding morality, decency, and good order, rather than upon the imposition as a matter of religious duty of any narrow view or regard for morality, decency, etc.[3] It has been said that Christianity is a part of the common law only in the qualified sense that it is interwoven into the texture of our society,[4] and in the sense that the common law draws its subsistence from the Christian system of ethics.[5] Since there is no established church or religion in the United States, Christianity, even where held to be within the common law, must contain perfect liberty of conscience.[6]

Footnotes

1 Vidal v. Girard's Ex'rs, 43 U.S. 127, 2 How. 127, 11 L. Ed. 205, 1844 WL 5960 (1844).
Christianity is part of the common law of Pennsylvania. Com. ex rel. Woodruff v. American Baseball Club of Philadelphia, 290 Pa. 136, 138 A. 497, 53 A.L.R. 1027 (1927).

2 Zeisweiss v. James, 63 Pa. 465, 1870 WL 8652 (1870); City Council of Charleston v. Benjamin, 33 S.C.L. 508, 2 Strob. 508, 1848 WL 2573 (Ct. App. Law 1848).

3 Yates v. Lansing, 8 Johns. 289, 1811 WL 1328 (N.Y. Sup 1811).

4 Mohney v. Cook, 26 Pa. 342, 1855 WL 7288 (1855).
As to speaking in derogation of the Christian religion as constituting a common-law offense, see Am. Jur. 2d, Blasphemy and Profanity § 5.

5 Strauss v. Strauss, 148 Fla. 23, 3 So. 2d 727 (1941).

6 Yates v. Lansing, 8 Johns. 289, 1811 WL 1328 (N.Y. Sup 1811); Zeisweiss v. James, 63 Pa. 465, 1870 WL 8652 (1870); City Council of Charleston v. Benjamin, 33 S.C.L. 508, 2 Strob. 508, 1848 WL 2573 (Ct. App. Law 1848).

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§ 9. Ecclesiastical law

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It has been said that since ecclesiastical courts never were established in this country, the code of laws enforced in those courts cannot be considered part of the common law as it existed in the colonies.[1] On the other hand, it has been asserted that the canon and civil laws as administered by the ecclesiastical courts of England are to be classed among the unwritten laws of England which, by custom, were adopted and used in a peculiar jurisdiction. It is maintained that such laws should be used in this country wherever there is a tribunal having the jurisdiction to employ them,[2] especially where the rule of the ecclesiastical courts is considered to be better law than the rule announced by a common-law court.[3]

Footnotes

1 Brown v. Brown, 42 Del. 157, 29 A.2d 149 (Super. Ct. 1942); Chisholm v. Chisholm, 98 Fla. 1196, 125 So. 694 (1929); In re Anonymous, 32 N.J. Super. 599, 108 A.2d 882 (Ch. Div. 1954); Brinkley v. Brinkley, 50 N.Y. 184, 1872 WL 9999 (1872).

2 Town of Pawlet v. Clark, 13 U.S. 292, 3 L. Ed. 735, 1815 WL 1492 (1815); Crump v. Morgan, 38 N.C. 91, 3 Ired. Eq. 91, 1843 WL 1025 (1843).

3 Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903).

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III. Adoption, Modification, and Abrogation

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III. Adoption, Modification, and Abrogation

§ 10. Adoption

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The English common law has been adopted as the basis of jurisprudence in all the states of the Union[1] with the exception of Louisiana, where the civil law prevails in civil matters.[2] The common law prevails generally throughout the United States, except as modified, changed, or repealed by statute or constitutional provisions of an individual state,[3] and only insofar as it is consistent with the constitution, statutes, or institutions of the state, is compatible with such state's views of liberty and sovereignty, and is adaptable to the wants and necessities of its people.[4]

The common law prevails in the District of Columbia and includes the principles of private international law.[5] The District of Columbia derives its common law from Maryland.[6]

Footnotes

1 Bucher v. Cheshire R. Co., 125 U.S. 555, 8 S. Ct. 974, 31 L. Ed. 795 (1888); Scott v. Vandiver, 476 F.2d 238 (4th Cir. 1973) (applying South Carolina law); Phipps v. Harding, 70 F. 468 (C.C.A. 7th Cir. 1895); Sutter County v. Superior Court for Sutter County, 244 Cal. App. 2d 770, 53 Cal. Rptr. 424 (3d Dist. 1966); Pattillo v. Alexander, 96 Ga. 60, 22 S.E. 646 (1895); State v. Finch, 128 Kan. 665, 280 P. 910, 66 A.L.R. 1369 (1929); Hemingway v. Scales, 42 Miss. 1, 1868 WL 2219 (1868); Williams v. Miles, 68 Neb. 463, 94 N.W. 705 (1903); Fulton Light, Heat & Power Co. v. State, 200 N.Y. 400, 94 N.E. 199 (1911); McKennon v. Winn, 1893 OK 16, 1 Okla. 327, 33 P. 582 (1893); Com. v. Mochan, 177 Pa. Super. 454, 110 A.2d 788 (1955); Gorman v. Budlong, 23 R.I. 169, 49 A. 704 (1901) (overruled in part on other grounds by, Sylvia v. Gobeille, 101 R.I. 76, 220 A.2d 222 (1966)); State v. Charleston Bridge Co., 113 S.C. 116, 101 S.E. 657 (1919); Moss v. State, 131 Tenn. 94, 173 S.W. 859 (1915); Johnson v. Union Pac. Coal Co., 28 Utah 46, 76 P. 1089 (1904); E.B. & A.C. Whiting Co. v. City of Burlington, 106 Vt. 446, 175 A. 35 (1934); Powell v. Sims, 5 W. Va. 1, 1871 WL 2728 (1871); Cross v. Berg Lumber Co., 7 P.3d 922 (Wyo. 2000).

Maryland is a so-called "common law state"; that is, by the first Maryland Constitution in 1776, the law of England was adopted, insofar as was compatible with state institutions, and a similar declaration has been made in subsequent Maryland Constitutions. In re Continental Midway Corp., 185 F. Supp. 867 (D. Md. 1960).

As used in a statute adopting the "common law," the quoted term refers to the common law of England. State v. Lackey, 271 N.C. 171, 155 S.E.2d 465 (1967).

2 Minor v. Young, 149 La. 583, 89 So. 757 (1920).

The basic and fundamental law of Louisiana is codal and statutory. Dieball v. Continental Cas. Co., 176 So. 2d 774 (La. Ct. App. 2d Cir. 1965), writ refused, 248 La. 428, 179 So. 2d 272 (1965).

It has been said that common law rules must be followed in Louisiana when there is no express law on the subject. State v. Kemp, 251 La. 592, 205 So. 2d 411 (1967).

3 Northern Pac. R. Co. v. Herbert, 116 U.S. 642, 6 S. Ct. 590, 29 L. Ed. 755 (1886); McCool v. Smith, 66 U.S. 459, 17 L. Ed. 218, 1861 WL 7661 (1861); Levy's Lessee v. McCartee, 31 U.S. 102, 8 L. Ed. 334, 1832 WL 3449 (1832); Doe ex dem. Patterson v. Winn, 30 U.S. 233, 8 L. Ed. 108, 1831 WL 3982 (1831); Kilmer v. Hicks, 22 Ariz. App. 552, 529 P.2d 706 (Div. 2 1974) (disapproved of on other grounds by, Summerfield v. Superior Court In and For Maricopa County, 144 Ariz. 467, 698 P.2d 712 (1985)); Hardick v. Homol, 795 So. 2d 1107 (Fla. Dist. Ct. App. 5th Dist. 2001); Robeson v. International Indem. Co., 248 Ga. 306, 282 S.E.2d 896 (1981); School Dist. No. 351 Oneida County v. Oneida Ed. Ass'n, 98 Idaho 486, 567 P.2d 830 (1977); Schwartz v. City of Chicago, 21 Ill. App. 3d 84, 315 N.E.2d 215 (1st Dist. 1974); In re Staros, 280 N.W.2d 409 (Iowa 1979); Ex parte Frye, 173 Kan. 392, 246 P.2d 313 (1952); Northern Kentucky Port Authority, Inc. v. Cornett, 700 S.W.2d 392 (Ky. 1985); In re Maddox, 93 Md. 727, 50 A. 487 (1901); People v. Stevenson, 416 Mich. 383, 331 N.W.2d 143 (1982); Tuggle v. Williamson, 450 So. 2d 93 (Miss. 1984) (holding modified on other grounds by, Daughtrey v. Daughtrey, 474 So. 2d 598 (Miss. 1985)); Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Balock v. Town of Melstone, 186 Mont. 303, 607 P.2d 545 (1980); Kresha v. Kresha, 216 Neb. 377, 344 N.W.2d 906 (1984); Hamm v. Carson City Nugget, Inc., 85 Nev. 99, 450 P.2d 358 (1969); Scott v. Rizzo, 96 N.M. 682, 634 P.2d 1234 (1981); Horace Waters & Co. v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907) (overruled on other grounds by, Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973)); Markey v. Queens County, 154 N.Y. 675, 49 N.E. 71 (1898); State v. Bass, 255 N.C. 42, 120 S.E.2d 580, 86 A.L.R.2d 259 (1961); Matter of Estate of Maheras, 1995 OK 40, 897 P.2d 268 (Okla. 1995); Nadstanek v. Trask, 130 Or. 669, 281 P. 840, 67 A.L.R. 599 (1929); Traugott v. Petit, 122 R.I. 60, 404 A.2d 77 (1979); Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993); State v. Shadbolt, 1999 SD 15, 590 N.W.2d 231 (S.D. 1999); Moss v. State, 131 Tenn. 94, 173 S.W. 859 (1915); Bruce Farms, Inc. v. Coupe, 219 Va. 287, 247 S.E.2d 400 (1978); Senear v. Daily Journal-American, a Division of Longview Pub. Co., 97 Wash. 2d 148, 641 P.2d 1180 (1982); State ex rel. Van Nguyen v. Berger, 199 W. Va. 71, 483 S.E.2d 71 (1996); State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381 (2003); Condos v. Trapp, 717 P.2d 827 (Wyo. 1986), on reh'g on other grounds, 739 P.2d 749 (Wyo. 1987).

4 § 12.

5 Kendall v. U.S. ex rel. Stokes, 37 U.S. 524, 9 L. Ed. 1181, 1838 WL 3946 (1838); Ex parte Watkins, 32 U.S. 568, 8 L. Ed. 786, 1833 WL 4223 (1833); Manoukian v. Tomasian, 237 F.2d 211 (D.C. Cir. 1956); Mead v. Phillips, 135 F.2d 819, 147 A.L.R. 322 (App. D.C. 1943); Snashall v. Metropolitan R. Co., 19 D.C. 399, 8 Mackey 399, 1890 WL 11332 (D.C. 1890).

6 In re Parnell's Estate, 275 F. Supp. 609 (D. D.C. 1967) (holding that decisions of the Court of Appeals of Maryland on questions which have not been determined by the Court of Appeals for the District of Columbia are of great weight in the District of Columbia, and perhaps of greater weight than decisions of other states, particularly in connection with the law of real property); State v. Heller, 4 Conn. Cir. Ct. 174, 228 A.2d 815 (App. Div. 1966).

Generally, as to the applicability of Maryland laws in the District of Columbia, see Am. Jur. 2d, District of Columbia § 3.

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15A Am. Jur. 2d Common Law § 11

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Common Law
Marie K. Pesando, J.D.

III. Adoption, Modification, and Abrogation

§ 11. Adoption—By statute or constitution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Common Law 12, 13

Although the view has been expressed that the common law would prevail in the absence of express adoption,[1] constitutional or statutory provisions in most jurisdictions expressly declare the common law to be in force therein so far as applicable[2] and to the extent that it is adaptable to the conditions and necessities of the people and is consistent with the constitution and laws of the nation and of the particular state or territory.[3] The 13 original states, in their constitutions and declarations of rights, recognized the common law as it had prevailed in the colonies.[4]

A constitutional or statutory provision by which the common law is adopted usually declares that it is adopted as it existed at a specified time, such as the fourth year of the reign of James I (the time of the first English colonization),[5] the time of the American Revolution,[6] or other particular time.[7] When the statute adopting the common law does not mention any time for the ascertainment of that law, the legislative intent is deemed to have adopted the common law as it existed at the time of the adopting statute.[8]

It has been said that in ascertaining the common law as adopted by the statute, the courts are not confined to the English decisions rendered prior to the Declaration of Independence, but may refer to the decisions of English and American courts (in states where the common law prevails) rendered prior and subsequently to the date of the statute.[9] After a state has once adopted the common law, it becomes as much a rule of decision therein as though the common law had been adopted at the very beginning of the political existence of that state.[10]

Footnotes

1 State ex rel. Rich v. Idaho Power Co., 81 Idaho 487, 346 P.2d 596 (1959); State v. Charleston Bridge Co., 113 S.C. 116, 101 S.E. 657 (1919).

2 Fuchs v. Goe, 62 Wyo. 134, 163 P.2d 783, 166 A.L.R. 1329 (1945) (stating that in this connection the word "applicable" is to be construed as meaning applicable to local habits and conditions and in harmony with the genius, spirit, and objects of local institutions).

3 Hamilton v. Brown, 161 U.S. 256, 16 S. Ct. 585, 40 L. Ed. 691 (1896); Barlow v. Lambert, 28 Ala. 704, 1856 WL 523 (1856); Hageman v. Vanderdoes, 15 Ariz. 312, 138 P. 1053 (1914); Schmier v. Supreme Court, 78 Cal. App. 4th 703, 93 Cal. Rptr. 2d 580 (1st Dist. 2000); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Hardick v. Homol, 795 So. 2d 1107 (Fla. Dist. Ct. App. 5th Dist. 2001); Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58, 70 A.L.R. 449 (1930); Kelly v. Easton, 35 Idaho 340, 207 P. 129, 26 A.L.R. 1042 (1922); McKee v. Trisler, 311 Ill. 536, 143 N.E. 69, 33 A.L.R. 1298 (1924); Fidelity & Deposit Co. of Maryland v. Brucker, 205 Ind. 273, 183 N.E. 668, 90 A.L.R. 166 (1933); State v. Dailey, 191 Ind. 678, 134 N.E. 481, 20 A.L.R. 1004 (1922); Cooper v. Seaverns, 81 Kan. 267, 105 P. 509 (1909); Ireland v. State, 310 Md. 328, 529 A.2d 365 (1987); Friend v. Childs Dining Hall Co., 231 Mass. 65, 120 N.E. 407, 5 A.L.R. 1100 (1918); Fry v. Equitable Trust Co., 264 Mich. 165, 249 N.W. 619, 90 A.L.R. 175 (1933); Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); State v. District Court of Fourth Judicial Dist. in and for Ravalli County, 52 Mont. 46, 155 P. 278 (1916); In re Grainger's Estate, 121 Neb. 338, 237 N.W. 153, 78 A.L.R. 597 (1931); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889); Loudon v. Loudon, 114 N.J. Eq. 242, 168 A. 840, 89 A.L.R. 904 (Ct. Err. & App. 1933); In re Gabaldon's Estate, 38 N.M. 392, 34 P.2d 672, 94 A.L.R. 980 (1934); Horace Waters & Co. v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907) (overruled on other grounds by, Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973))
Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1 (2004); State v. Henley, 98 Tenn. 665, 41 S.W. 1104 (1897); Eisen v. State, 40 S.W.3d 628 (Tex. App. Waco 2001), petition for discretionary review refused, (Aug. 29, 2001); Clement v. Graham, 78 Vt. 290, 63 A. 146 (1906); Garrett v. Byerly, 155 Wash. 351, 284 P. 343, 68 A.L.R. 254 (1930) (overruled in part on other grounds by, Martin v. Hadenfeldt, 157 Wash. 563, 289 P. 533 (1930)); State v. Foster, 5 Wyo. 199, 38 P. 926 (1895).

4 Com. v. York, 50 Mass. 93, 9 Met. 93, 1845 WL 4042 (1845); Com. v. Hunt, 45 Mass. 111, 4 Met. 111, 1842 WL 4012 (1842); State v. Moore, 26 N.H. 448, 1853 WL 2441 (1853); Horace Waters & Co. v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907) (overruled on other grounds by, Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973)); Elmendorf v. Delancey, Hopk. Ch. 555, 2 N.Y. Ch. Ann. 521, 1825 WL 1854 (N.Y. Ch. 1825); McCorry v. King's Heirs, 22 Tenn. 267, 3 Hum. 267, 1842 WL 1936 (1842).
As to recognition of the common law in colonial charters, see § 3.

5 Clayton v. Hallett, 30 Colo. 231, 70 P. 429 (1902); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Beavan v. Went, 155 Ill. 592, 41 N.E. 91 (1895); People ex rel. German Ins. Co. v. Williams, 145 Ill. 573, 33 N.E. 849 (1893); Sopher v. State, 169 Ind. 177, 81 N.E. 913 (1907); Aetna Ins. Co. v. Commonwealth, 106 Ky. 864, 21 Ky. L. Rptr. 503, 51 S.W. 624 (1899); Ray v. Sweeney, 77 Ky. 1, 14 Bush 1, 1878 WL 7978 (1878); State ex rel. Schlueter Mfg. Co. v. Beck, 337 Mo. 839, 85 S.W.2d 1026 (1935); Baker's Adm'r v. Crandall, 78 Mo. 584, 1883 WL 9444 (1883); Johnson v. Union Pac. Coal Co., 28 Utah 46, 76 P. 1089 (1904); State v. Foster, 5 Wyo. 199, 38 P. 926 (1895).

6 Clark v. State, 114 So. 2d 197, 80 A.L.R.2d 261 (Fla. Dist. Ct. App. 1st Dist. 1959); Burke v. Buck, 31 Nev. 74, 99 P. 1078 (1909); Hatcher v. Rose, 329 N.C. 626, 407 S.E.2d 172 (1991); State v. Alley, 594 S.W.2d 381 (Tenn. 1980); Cooper v. Runnels, 48 Wash. 2d 108, 291 P.2d 657, 57 A.L.R.2d 597 (1955); Davison v. St. Paul Fire & Marine Ins. Co., 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

7 Grimmett v. Barnwell, 184 Ga. 461, 192 S.E. 191, 116 A.L.R. 257 (1937) (laws in force in the State of Virginia on June 1, 1792); Friend v. Childs Dining Hall Co., 231 Mass. 65, 120 N.E. 407, 5 A.L.R. 1100 (1918); Herrin v. Sutherland, 74 Mont. 587, 241 P. 328, 42 A.L.R. 937 (1925); Spaulding v. Chicago & N. W. Ry. Co., 30 Wis. 110, 1872 WL 3093 (1872).

8 Martin v. Superior Court of California in and for Alameda County, 176 Cal. 289, 168 P. 135 (1917); Southern Pac. Co. v. Porter, 160 Tex. 329, 331 S.W.2d 42 (1960); Grigsby v. Reib, 105 Tex. 597, 153 S.W. 1124 (1913).

9 Hawkinson v. Johnston, 122 F.2d 724, 137 A.L.R. 420 (C.C.A. 8th Cir. 1941); Seymour v. McAvoy, 121 Cal. 438, 53 P. 946 (1898).

The common law of England adopted by Texas as part of its law in 1840 was not the law existing in England at that time, but the law as it was declared by the courts of the different states of the Union. Grigsby v. Reib, 105 Tex. 597, 153 S.W. 1124 (1913).

10 Swayne v. Lone Acre Oil Co., 98 Tex. 597, 86 S.W. 740 (1905).

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15A Am. Jur. 2d Common Law § 12

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Common Law
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III. Adoption, Modification, and Abrogation

§ 12. Adoption—Selective or limited adoption

Topic Summary | Correlation Table | References

West's Key Number Digest

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Particular principles of the common law will not be enforced in localities to which they are inapplicable,[1] regardless of whether the common law, unchanged by statute, has[2] or has not[3] been adopted as the law of the state. Common-law rules will be recognized and adopted when they meet conditions existing in the state, and they will not be allowed to control where the conditions are those not contemplated by the common law.[4]

Although the common law of England,[5] as it existed at a particular time in history,[6] is often cited as the starting point for determining the common law of a state, the proviso is commonly added that such common law, to be part of the law of the state, must not be inconsistent with the Federal constitution and laws, or the laws or political institutions of the state.[7] It is a basic principle that only so much of the English common law has been adopted as is compatible with our views of liberty and sovereignty,[8] or as is adaptable to the peculiar conditions and circumstances of each state[9] or to the wants and necessities of its people,[10] or in harmony with the genius, spirit, and objects of its institutions.[11] Ordinarily, therefore, it is only the common-law principles of a general nature, and not those which are of a local or special character, that are adopted.[12] This principle of selective adoption stems from the view that the law consists not in the actual rules enforced by the decisions of the courts, but only in the principles from which these rules flow.[13]

Furthermore, principles may be recognized as common law in a state which were never recognized as such in England[14] or which may be, in fact, diametrically opposed thereto.[15] Moreover, since various political and geographical conditions prevail in different localities, the common law in one state may not be so considered in another.[16] However, though there may be great interstate disparity, the general rule is that different common-law principles cannot be recognized for different sections of the same state.[17]

Observation:

Once a legislature has chosen to act in an area of the common law and codify a common law rule, adopting only a portion of a common law rule, it is to be presumed that the legislature limited its adoption for a reason.[18]

Footnotes

1 Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889).

2 Graham v. Bayne, 59 U.S. 60, 18 How. 60, 15 L. Ed. 265, 1855 WL 8274 (1855); Kansas City, M. & B.R. Co. v. Smith, 72 Miss. 677, 17 So. 78 (1895).
In Hawkinson v. Johnston, 122 F.2d 724, 137 A.L.R. 420 (C.C.A. 8th Cir. 1941), the court held that even if there were an express decision by an English court as of 1607, or that approximate period, holding that there could be no anticipatory repudiation of a contract of lease, it would not be wholly conclusive of the question, under the Missouri statute which requires the court to apply the English common law as it existed at that time, since the Missouri courts have practically construed the statute so as to leave the court liberty to declare that any portion of the common law inapplicable to "our" condition and circumstances shall not obtain "here."
As to express adoption of the common law, so far as applicable, see § 11.

3 Lorman v. Benson, 8 Mich. 18, 1860 WL 4665 (1860); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889).

4 Jones v. California Development Company, 173 Cal. 565, 160 P. 823 (1916); San Joaquin & Kings River Canal & I. Co. v. Fresno F. & I. Co, 158 Cal. 626, 112 P. 182 (1910); Cahoon v. Pelton, 9 Utah 2d 224, 342 P.2d 94 (1959) (overruled in part on other grounds by, Norton v. Macfarlane, 818 P.2d 8 (Utah 1991)).

5 § 10.

6 § 11.

7 State ex rel. Clayton v. Board of Regents, 635 So. 2d 937, 90 Ed. Law Rep. 1337 (Fla. 1994).

8 Bucher v. Cheshire R. Co., 125 U.S. 555, 8 S. Ct. 974, 31 L. Ed. 795 (1888); Clark v. Goddard, 39 Ala. 164, 1863 WL 360 (1863); Kennedy v. Burnap, 120 Cal. 488, 52 P. 843 (1898); Fidelity & Deposit Co. of Maryland v. Brucker, 205 Ind. 273, 183 N.E. 668, 90 A.L.R. 166 (1933); Adams Bros. v. Clark, 189 Ky. 279, 224 S.W. 1046, 14 A.L.R. 738 (1920); Cohen v. Manuel, 91 Me. 274, 39 A. 1030 (1898); Lickle v. Boone, 187 Md. 579, 51 A.2d 162, 170 A.L.R. 156 (1947); North Carolina Corporation Commission v. Citizens' Bank & Trust Co., 193 N.C. 513, 137 S.E. 587, 51 A.L.R. 1350 (1927); Fowler v. City of Cleveland, 100 Ohio St. 158, 126 N.E. 72, 9 A.L.R. 131 (1919) (overruled in part on other grounds by, Aldrich v. City of Youngstown, 106 Ohio St. 342, 1 Ohio L. Abs. 80, 140 N.E. 164, 27 A.L.R. 1497 (1922)); State v. Verage, 177 Wis. 295, 187 N.W. 830, 23 A.L.R. 491 (1922) (overruled on other grounds by, State v. King, 82 Wis. 2d 124, 262 N.W.2d 80 (1978)).

9 Chisholm v. Georgia, 2 U.S. 419, 2 Dall. 419, 1 L. Ed. 440, 1793 WL 685 (1793); Phipps v. Harding, 70 F. 468 (C.C.A. 7th Cir. 1895); Harkness v. Sears, 26 Ala. 493, 1855 WL 339 (1855); Hageman v. Vanderdoes, 15 Ariz. 312, 138 P. 1053 (1914); San Joaquin & Kings River Canal & I. Co. v. Fresno F. & I. Co, 158 Cal. 626, 112 P. 182 (1910); Beavan v. Went, 155 Ill. 592, 41 N.E. 91 (1895); Gatton v. Chicago, R.I. & P. Ry. Co., 95 Iowa 112, 63 N.W. 589 (1895); Clark v. Allaman, 71 Kan. 206, 80 P. 571 (1905); Com. v. York, 50 Mass. 93, 9 Met. 93, 1845 WL 4042 (1845); Lorman v. Benson, 8 Mich. 18, 1860 WL 4665 (1860);

Vicksburg & J.R. Co. v. Patton, 31 Miss. 156, 1856 WL 2591 (1856); Conrad v. Fisher, 37 Mo. App. 352, 1889 WL 1668 (1889); Leyson v. Davis, 17 Mont. 220, 42 P. 775 (1895), dismissed, 170 U.S. 36, 18 S. Ct. 500, 42 L. Ed. 939 (1898); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889); Trustees, etc., of Town of Brookhaven v. Smith, 188 N.Y. 74, 80 N.E. 665 (1907); Crump v. Morgan, 38 N.C. 91, 3 Ired. Eq. 91, 1843 WL 1025 (1843); Fowler v. City of Cleveland, 100 Ohio St. 158, 126 N.E. 72, 9 A.L.R. 131 (1919) (overruled in part on other grounds by, Aldrich v. City of Youngstown, 106 Ohio St. 342, 1 Ohio L. Abs. 80, 140 N.E. 164, 27 A.L.R. 1497 (1922)); In re Pennock's Estate, 20 Pa. 268, 1853 WL 6273 (1853); Thompson v. Andrews, 39 S.D. 477, 165 N.W. 9 (1917); Grigsby v. Reib, 105 Tex. 597, 153 S.W. 1124 (1913); Martin v. Bigelow, 2 Aik. 184, 1827 WL 1365 (Vt. 1827); Cooper v. Runnels, 48 Wash. 2d 108, 291 P.2d 657, 57 A.L.R.2d 597 (1955); Powell v. Sims, 5 W. Va. 1, 1871 WL 2728 (1871).

A state statute making the common law of England the law of the state does not put in force common-law rules unsuited to conditions in the state. Hornsby v. Smith, 191 Ga. 491, 13 S.E.2d 20, 133 A.L.R. 684 (1941).

Such English common-law doctrines and principles as are repugnant to nature and character of our political system, or which different and varied circumstances of our country render inapplicable to us, are either not in force here, or must be so modified in their application as to adapt them to our condition; thus, by statute and case law, we are free, in essence, to adopt from English common- law those principles that fit our way of life and to reject those which do not. Weishaupt v. Com., 227 Va. 389, 315 S.E.2d 847 (1984).

10 Gatton v. Chicago, R.I. & P. Ry. Co., 95 Iowa 112, 63 N.W. 589 (1895); Schaake v. Dolley, 85 Kan. 598, 118 P. 80 (1911); Baker's Adm'r v. Crandall, 78 Mo. 584, 1883 WL 9444 (1883); Reno Smelting, Milling & Reduction Works v. Stevenson, 20 Nev. 269, 21 P. 317 (1889); Fowler v. City of Cleveland, 100 Ohio St. 158, 126 N.E. 72, 9 A.L.R. 131 (1919) (overruled in part on other grounds by, Aldrich v. City of Youngstown, 106 Ohio St. 342, 1 Ohio L. Abs. 80, 140 N.E. 164, 27 A.L.R. 1497 (1922)); State v. Cleveland & P. R. Co., 94 Ohio St. 61, 113 N.E. 677 (1916); Commonwealth v. Lehigh Valley R. Co., 165 Pa. 162, 30 A. 836 (1895); Cahoon v. Pelton, 9 Utah 2d 224, 342 P.2d 94 (1959) (overruled in part on other grounds by, Norton v. Macfarlane, 818 P.2d 8 (Utah 1991)) (common law of England adopted only where suitable to the local conditions, morals, history, and background); Powell v. Sims, 5 W. Va. 1, 1871 WL 2728 (1871).

11 Seeley v. Peters, 10 Ill. 130, 5 Gilman 130, 1848 WL 4133 (1848); Wagner v. Bissell, 3 Iowa 396, 3 Clarke 396, 1856 WL 233 (1856); Fuchs v. Goe, 62 Wyo. 134, 163 P.2d 783, 166 A.L.R. 1329 (1945).

The adoption of the common law in the most general terms by any state would not admit of an unqualified application of all its rules without regard to local circumstances and the then-present enlightened conception of reason and justice, since the common law is applicable only insofar as it is suited to the genius, spirit, and objects of its intendments affecting the society of the state. State ex rel. Johnson v. Tautges, Rerat & Welch, 146 Neb. 439, 20 N.W.2d 232 (1945).

The adoption of the common law insofar "as applicable to the habits and conditions of our society, and in harmony with the genius, spirit, and objects of our institutions," does not mean that every rule must be subjected to the peculiar test of whether it is better suited than some other to our situation, but whether differences between conditions here and in England render it inadequate. Doyle v. Andis, 127 Iowa 36, 102 N.W. 177 (1905); Thompson v. Andrews, 39 S.D. 477, 165 N.W. 9 (1917).

12 Pattillo v. Alexander, 96 Ga. 60, 22 S.E. 646 (1895); Ray v. Sweeney, 77 Ky. 1, 14 Bush 1, 1878 WL 7978 (1878).

The common law of England is not to be taken in all respects to be that of America. Our ancestors brought with them its general principles and claimed it as their birthright, but they brought with them and adopted only that portion which was applicable to their situation. Van Ness v. Pacard, 27 U.S. 137, 7 L. Ed. 374, 1829 WL 3179 (1829).

13 State ex rel. Johnson v. Tautges, Rerat & Welch, 146 Neb. 439, 20 N.W.2d 232 (1945).

14 Commonwealth v. Lehigh Valley R. Co., 165 Pa. 162, 30 A. 836 (1895); Forepaugh v. Delaware, L. & W. R. Co., 128 Pa. 217, 18 A. 503 (1889).

15 Cooper v. Seaverns, 81 Kan. 267, 105 P. 509 (1909); Kansas City, M. & B.R. Co. v. Smith, 72 Miss. 677, 17 So. 78 (1895).

16 Vicksburg & J.R. Co. v. Patton, 31 Miss. 156, 1856 WL 2591 (1856); Forepaugh v. Delaware, L. & W. R. Co., 128 Pa. 217, 18 A. 503 (1889).

The common law, as it existed in England, has ever been in force in all its provisions in any state; it was adopted so far only as its principles were suited to the condition of the Colonies, and from this circumstance

we see what is common law in one state is not so considered in another. Wheaton v. Peters, 33 U.S. 591, 8 L. Ed. 1055, 1834 WL 3830 (1834).

17 Clark v. Allaman, 71 Kan. 206, 80 P. 571 (1905); Meng v. Coffey, 67 Neb. 500, 93 N.W. 713 (1903).

18 State v. Pina, 149 Idaho 140, 233 P.3d 71 (2010).

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15A Am. Jur. 2d Common Law § 13

American Jurisprudence, Second Edition | May 2021 Update

Common Law
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III. Adoption, Modification, and Abrogation

§ 13. Modification or abrogation by courts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Common Law 11

Just as the common law is court-made law based on the circumstances and conditions of the time, so can the common law be changed by the court when conditions and circumstances change.[1] The courts have a right and a duty to develop the common law in the light of changing conditions in society,[2] and neither the rule of stare decisis[3] nor statutory or constitutional provisions generally preserving the force and effect of the common law[4] bar the courts from the discharge of that duty. Total abrogation,[5] revision,[6] or modification or change[7] of an outmoded common-law rule is within the competence of the judiciary; and indeed it is the duty of the courts to bring the law into accordance with present-day standards of wisdom and justice,[8] and to keep it responsive to the demands of a changing scene.[9] Thus, it is said that a court should not be bound by an early common-law rule unless it is supported by reason and logic.[10] The nature of the common law requires that each time a rule of law is applied, it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice.[11] The courts will not adhere slavishly to a common-law doctrine if it is unsuitable to the circumstances of the people or if the conditions under which it is invoked are not those contemplated by the common law.[12] Whenever an old rule is found unsuited to present conditions or unsound, it should be set aside and a rule declared which is in harmony with those conditions and meets the demands of justice.[13]

CUMULATIVE SUPPLEMENT

Cases:

When the common law of the past is no longer in harmony with the institutions or societal conditions of the present, the Supreme Court of Appeals is constitutionally empowered to adjust the common law to current needs. State ex rel. Golden v. Kaufman, 760 S.E.2d 883 (W. Va. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Young v. Beck, 227 Ariz. 1, 251 P.3d 380 (2011).

2 Rockstead v. City of Crystal Lake, 486 F.3d 963 (7th Cir. 2007); Shannon v. Wilson, 329 Ark. 143, 947 S.W.2d 349 (1997); LaBier v. Pelletier, 665 A.2d 1013 (Me. 1995); Robinson v. State, 307 Md. 738, 517 A.2d 94 (1986); Miller v. Fallon County, 222 Mont. 214, 721 P.2d 342 (1986); Gallimore v. Children's Hosp. Med. Ctr., 67 Ohio St. 3d 244, 1993-Ohio-205, 617 N.E.2d 1052 (1993); State v. Horne, 282 S.C. 444, 319 S.E.2d 703 (1984); Cary v. Cary, 937 S.W.2d 777 (Tenn. 1996); El Chico Corp. v. Poole, 732 S.W.2d 306 (Tex. 1987); Hay v. Medical Center Hosp. of Vermont, 145 Vt. 533, 496 A.2d 939 (1985); Thomas ex rel. Gramling v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523 (2005).
The Supreme Court has a continuing duty to consider whether common law, as created and developed through case law, is obsolete. Broadwell by Broadwell v. Holmes, 871 S.W.2d 471 (Tenn. 1994).
See also La Plant v. E. I. Du Pont De Nemours & Co., 346 S.W.2d 231 (Mo. Ct. App. 1961), in which the court emphatically rejected the contention that its function was simply to find the common law of England as it existed in 1607 and the statutory modification thereof, stating that the flexibility and capacity for growth and adaptation of the common law are both the letter and the spirit of the cases dealing therewith.

3 Pope v. State, 284 Md. 309, 396 A.2d 1054, 1 A.L.R.4th 1 (1979).

4 U.S. v. Jackson, 528 A.2d 1211 (D.C. 1987); State ex rel. Johnson v. Tautges, Rerat & Welch, 146 Neb. 439, 20 N.W.2d 232 (1945); Mallet v. Pickens, 206 W. Va. 145, 522 S.E.2d 436 (1999); Sorensen by Kerscher v. Jarvis, 119 Wis. 2d 627, 350 N.W.2d 108 (1984).

5 Blount v. Stroud, 232 Ill. 2d 302, 328 Ill. Dec. 239, 904 N.E.2d 1 (2009); Brooks v. Robinson, 259 Ind. 16, 284 N.E.2d 794 (1972) (abrogating the common-law doctrine of interspousal immunity in tort actions); State v. International Federation of Professional and Technical Engineers, Local 195, 169 N.J. 505, 780 A.2d 525 (2001); Thomas ex rel. Gramling v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523 (2005).

6 Rockstead v. City of Crystal Lake, 486 F.3d 963 (7th Cir. 2007); Durham v. U.S., 214 F.2d 862, 45 A.L.R.2d 1430 (D.C. Cir. 1954) (abrogated on other grounds by, U.S. v. Brawner, 471 F.2d 969 (D.C. Cir. 1972)); Mendoza v. Tamaya Enterprises, Inc., 2011-NMSC-030, 2011 WL 3111922 (N.M. 2011).
A federally created right should not be vitiated by an outdated, much criticized anachronism of the common law. Wiederhold v. Elgin, J. & E. Ry. Co., 368 F. Supp. 1054 (N.D. Ind. 1974).
In Faber v. Creswick, 31 N.J. 234, 156 A.2d 252, 78 A.L.R.2d 1230 (1959), the court noted that in England, because of the hybrid nature of its Parliament and highest court, once a common-law doctrine has been established, only Parliament by the exercise of the law-making function can alter its fundamental character, but such is not the case in the United States.

7 Rockstead v. City of Crystal Lake, 486 F.3d 963 (7th Cir. 2007); Young v. Beck, 227 Ariz. 1, 251 P.3d 380 (2011); Smith v. State, 345 Ark. 472, 48 S.W.3d 529 (2001); Craig v. Driscoll, 262 Conn. 312, 813 A.2d 1003 (2003); Newby v. U.S., 797 A.2d 1233 (D.C. 2002); Bland v. Scott, 279 Kan. 962, 112 P.3d 941, 198 Ed. Law Rep. 721 (2005); Price v. State, 405 Md. 10, 949 A.2d 619 (2008); State v. Lemmer, 736 N.W.2d 650 (Minn. 2007); In re Care and Treatment of Lieurance, 130 S.W.3d 693 (Mo. Ct. App. S.D. 2004); Dupuis v. General Cas. Co. of Wis., 36 Wis. 2d 42, 152 N.W.2d 884 (1967).
In an appropriate case, common law may be judicially modified to create a new tort duty.
Borns ex rel. Gannon v. Voss, 2003 WY 74, 70 P.3d 262 (Wyo. 2003).

8 Funk v. U.S., 290 U.S. 371, 54 S. Ct. 212, 78 L. Ed. 369, 93 A.L.R. 1136 (1933).
When common-law principles are no longer supportable in reason they are no longer supportable in fact. Handeland v. Brown, 216 N.W.2d 574 (Iowa 1974).
In Woods v. Lancet, 303 N.Y. 349, 102 N.E.2d 691, 27 A.L.R.2d 1250 (1951), the court stated, "We act in the finest common-law tradition when we adapt and alter decisional law to produce common-sense justice."

9 State v. Rush, 46 N.J. 399, 217 A.2d 441, 21 A.L.R.3d 804 (1966).

10 Cowgill v. Boock, 189 Or. 282, 218 P.2d 445, 19 A.L.R.2d 405 (1950).

11 Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); State v. Culver, 23 N.J. 495, 129 A.2d 715 (1957).

12 State of California v. Superior Court (Lyon), 29 Cal. 3d 210, 172 Cal. Rptr. 696, 625 P.2d 239 (1981); John Hopkins Hosp. v. Correia, 405 Md. 509, 954 A.2d 1073 (2008).

13 Missouri Pac. Transp. Co. v. Miller, 227 Ark. 351, 299 S.W.2d 41 (1957); Katz v. Walkinshaw, 141 Cal. 116, 70 P. 663 (1902), rev'd on other grounds, 141 Cal. 116, 74 P. 766 (1903); Mitchell v. State, 179 Miss. 814, 176 So. 743, 121 A.L.R. 258 (1937); Flandermeyer v. Cooper, 85 Ohio St. 327, 98 N.E. 102 (1912); State v. Esser, 16 Wis. 2d 567, 115 N.W.2d 505 (1962).

The common law may be altered when the reason for a rule of law ceases to exist. U.S. v. Dempsey, 635 So. 2d 961 (Fla. 1994).

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15A Am. Jur. 2d Common Law § 14

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Common Law
Marie K. Pesando, J.D.

III. Adoption, Modification, and Abrogation

§ 14. Modification or abrogation by courts—Limitations on powers of courts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Common Law 11

Limitations on the power of courts to modify or abrogate the common law have been stated in various decisions. Thus, it has been said that there are some common-law doctrines so firmly established that they may not be judicially abrogated.[1] It has also been said that where the common law has been adopted as the rule of practice and decision, courts are not at liberty to judicially authorize actions or proceedings wholly unknown to the common law.[2] Also, in some instances, the courts have declined to modify a common-law rule on the grounds that it is the function of the legislature to amend or repeal laws.[3] It has been said that the power of courts to declare established doctrines of the common law inapplicable to a particular state should be used sparingly.[4]

CUMULATIVE SUPPLEMENT

Cases:

Although the Supreme Court may declare the common law where there is no governing statute or a constitutional provision, when the courts exercise their common-law authority, the guiding principle is that they should not exercise this authority in disregard of existing constitutional and statutory provisions. Barber v. State, Dept. of Corrections, 314 P.3d 58 (Alaska 2013).

Supreme Court must generally show restraint in altering existing allocations of risk created by long-tenured common law rules and resist the temptation of experimentation with untested social policies, especially where the individual record and the advocacy of the parties in the context of that record offer little more than abstract justifications. Tincher v. Omega Flex, Inc., 104 A.3d 328 (Pa. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Davis v. Board of County Com'rs of Carbon County, 495 P.2d 21 (Wyo. 1972) (overruled on other grounds by, Collins v. Memorial Hospital of Sheridan County, 521 P.2d 1339 (Wyo. 1974)) and (overruled on other grounds by, Jivelekas v. City of Worland, 546 P.2d 419 (Wyo. 1976)).

2 Hall v. Budagher, 76 N.M. 591, 417 P.2d 71 (1966) (overruled on other grounds by, Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982)).

3 See, for example, Page v. Winter, 240 S.C. 516, 126 S.E.2d 570 (1962) (refusing to depart from the common-law rule denying a wife a cause of action in negligence for loss of consortium).
Before the court construes statutes to modify common law rules, it must look carefully to be sure that was what the legislature intended. Energy Service Co. of Bowie, Inc. v. Superior Snubbing Services, Inc., 236 S.W.3d 190 (Tex. 2007).
Judicial change in the common law should be avoided when there is no substantial body of agreement that such change is necessary and when it is patent that such change can be better effected by legislative action. Duhan v. Milanowski, 75 Misc. 2d 1078, 348 N.Y.S.2d 696 (Sup 1973).
The modification of the common law with respect to the creation of joint tenancies, or survivorship between co-owners, is a matter for the legislature, not for the courts. Strout v. Burgess, 144 Me. 263, 68 A.2d 241, 12 A.L.R.2d 939 (1949).

4 Meng v. Coffey, 67 Neb. 500, 93 N.W. 713 (1903), also stating that the exercise of this power is not justified unless the inapplicability of a rule is general, extending to the whole or a greater part of the state, or at least to an area capable of definite judicial ascertainment.

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15A Am. Jur. 2d Common Law § 15

American Jurisprudence, Second Edition | May 2021 Update

Common Law
Marie K. Pesando, J.D.

III. Adoption, Modification, and Abrogation

§ 15. Change or abrogation by statute or constitution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Common Law 11 to 13

Congress has the power to modify or abolish common-law rights or remedies.[1] However, where a common law principle is well established, courts may take it as given that Congress has legislated with an expectation that the principle will apply except when a statutory purpose to the contrary is evident.[2] Moreover, a state in its constitution may supersede and abrogate the common law.[3] The state may also by a legislative act change or entirely abrogate rules of the common law,[4] unless it is prohibited from so doing by its own or the Federal Constitution.[5] The mere grant of legislative power in a constitution implies the right to change the common law.[6] For example, changes may be made with reference to administrative and remedial processes,[7] and a state may change the common law so as to create duties and liabilities which never existed before.[8] The legislature may limit or bar the application of judge-made common law, including preclusion doctrines such as collateral estoppel and res judicata.[9] Similarly, a legislature has the authority to change or abolish common-law tort claims, including the ability to limit remedies for such claims.[10] Moreover, a legislature may modify the elements of common law causes of action, subject to constitutional constraints;[11] in addition, a legislature has the power to modify or repeal common law causes of action.[12] Enactment of a statutory cause of action will be construed as abrogating a common-law claim if there exists a clear repugnance between the two causes of action.[13] However, abrogation of common-law claims by legislative creation of a statutory remedy is disfavored.[14]

If possible, statutory enactments should be construed by courts as consistent with the common law,[15] and statutes should not be construed to alter common law principles absent an explicit statement of legislative intent to do so.[16] Indeed, statutes that invade the common law are to be read with a presumption favoring the retention of long-established and familiar principles, except where a contrary statutory purpose is evident.[17] Abrogation of the common law occurs only when the legislative intent to do so is plainly manifested, as there is a presumption that no change was intended.[18] When, however, there is an inconsistency, the statute, if constitutional, controls.[19]

Observation:

Legislation as an expression of public policy can serve to shape and add content to the common law, even though such legislative expression may not be directly applicable or binding in a given matter.[20]

Where a right exists at common law, such as the right of inspection of corporate records by a shareholder, and a statute is enacted providing an analogous remedy, such statutory remedy is merely cumulative to the common-law remedy unless it explicitly provides that it shall be exclusive.[21] Where, on the other hand, a statute revises the common law and is clearly designed as a substitute therefor, the common law is repealed.[22] The legislature may supersede the common law without an express directive to that effect, as by adoption of a system of statutes comprehensively dealing with the subject to which the common-law rule related.[23] Thus, where a statute purports to be a revision of the whole subject, any and all common law of which a statutory provision not included in the revision was declaratory is thereby abrogated.[24] On the other hand, a partial codification of a common-law rule does not necessarily abolish such portion of the rule not encompassed within the statute.[25] Thus, the general rule is that statutes do not supplant the common law unless it appears that the legislature intended to cover the entire subject.[26] Moreover, the common law may not be abrogated by implication; instead, its alteration must be explicitly expressed.[27] Courts are hesitant to recognize an abrogation or derogation from the common law absent clear evidence of the legislature's intent to deviate from the common law,[28] and such intent will not be presumed from ambiguous or doubtful language.[29]

Observation:

Where a Uniform Commercial Code (UCC) provision specifically defines parties' rights and remedies, it displaces analogous common-law theories of liability.[30] Displacement of a common-law rule under the U.C.C. does not require an unequivocal, explicit reference to the common-law rule being displaced; if the U.C.C. provision conflicts with the common law in some way, the common law must be said to be displaced.[31] Thus, when the U.C.C. prescribes particular standards of care or limitations on liability, the common law is annulled to the extent it modifies these standards or changes these limitations.[32]

Even where the common law is declared by statute to be the rule of practice and decision, it does not apply where the subject matter of any procedural right is fully covered by statute or rule.[33]

Observation:

As a general principle, the repeal of a rule which modifies the common law operates to reinstate the common law rule, absent contrary legislative intent.[34]

CUMULATIVE SUPPLEMENT

Cases:

Where the interaction of common law and statutory law is at issue, courts acknowledge and respect the General Assembly's authority to modify or abrogate common law, but courts only recognize such changes when they are clearly expressed. Beren v. Beren, 2015 CO 29, 349 P.3d 233 (Colo. 2015).

The common law may be repealed by implication in a statute that plainly expresses the legislature's intent to do so. Iowa Farm Bureau Federation v. Environmental Protection Com'n, 850 N.W.2d 403 (Iowa 2014).

The Legislature's intent to preempt common law must be clear. City of St. Peters v. Roeder, 466 S.W.3d 538 (Mo. 2015).

The Supreme Court will not read a statute to abrogate the common law without clear legislative instruction to do so. First Fin. Bank v. Lane, 339 P.3d 1289, 130 Nev. Adv. Op. No. 96 (Nev. 2014).

In the absence of language showing the intention to supersede the common law, the existing common law is not affected by statute, but continues in full force. Zager v. Johnson Controls, Inc., 2014-Ohio-3998, 18 N.E.3d 533 (Ohio Ct. App. 12th Dist. Butler County 2014).

Where statute operates in an area formerly governed by the common law, courts will find a change in the law only if the statute overturns the common law in clear and unambiguous language, or if the statute is clearly inconsistent with the common law. Oblak v. University of Vermont Police Services, 2019 VT 56, 217 A.3d 946 (Vt. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Stumo v. United Air Lines, Inc., 382 F.2d 780 (7th Cir. 1967).
Legislative usurpation of existing common law definitions should not be presumed lightly, but when Congress speaks clearly on an issue, and when the language chosen comports with the statutory purpose, the legislative definition supplants the preexisting common law definition.
U.S. v. Prosperi, 201 F.3d 1335, 53 Fed. R. Evid. Serv. 1413 (11th Cir. 2000).

2 In re Brookover, 352 F.3d 1083, 2003 FED App. 0451P (6th Cir. 2003).

3 U.S. v. Harrison County, Miss., 399 F.2d 485 (5th Cir. 1968) (common law doctrine of artificial accretion must yield to the command of the Mississippi Constitution as to the disposition of state-owned lands).

4 Somer v. Johnson, 704 F.2d 1473, 13 Fed. R. Evid. Serv. 123, 37 Fed. R. Serv. 2d 620 (11th Cir. 1983) (applying Florida law); State, Dept. of Natural Resources v. Alaska Riverways, Inc., 232 P.3d 1203 (Alaska 2010); Smith v. State, 345 Ark. 472, 48 S.W.3d 529 (2001); Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc., 190 Cal. App. 4th 1502, 119 Cal. Rptr. 3d 529 (6th Dist. 2010); Vaughan v. McMinn, 945 P.2d 404 (Colo. 1997); Andy's Oil Service, Inc. v. Hobbs, 125 Conn. App. 708, 9 A.3d 433 (2010), certification denied, 300 Conn. 928, 16 A.3d 703 (2011); Saunders v. Saunders, 796 So. 2d 1253 (Fla. Dist. Ct. App. 1st Dist. 2001); In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409 (2000); Olsen v. J.A. Freeman Co., 117 Idaho 706, 791 P.2d 1285 (1990); Blount v. Stroud, 232 Ill. 2d 302, 328 Ill. Dec. 239, 904 N.E.2d 1 (2009); Sims v. United States Fidelity & Guar. Co., 782 N.E.2d 345 (Ind. 2003); Capital One Bank (USA), N.A. v. Denboer, 791 N.W.2d 264 (Iowa Ct. App. 2010); Woodruff v. City of Ottawa, 263 Kan. 557, 951 P.2d 953 (1997); John Hopkins Hosp. v. Correia, 405 Md. 509, 954 A.2d 1073 (2008); O'Malley v. Soske, 76 Mass. App. Ct. 495, 923 N.E.2d 552 (2010); People v. Gayheart, 285 Mich. App. 202, 776 N.W.2d 330 (2009), appeal denied, 486 Mich. 957, 782 N.W.2d 207 (2010); State v. Lemmer, 736 N.W.2d 650 (Minn. 2007); In re Care and Treatment of Lieurance, 130 S.W.3d 693 (Mo. Ct. App. S.D. 2004); Meech v. Hillhaven West, Inc., 238 Mont. 21, 776 P.2d 488 (1989); City of Albuquerque v. New Mexico Public Regulation Com'n, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297 (2003); Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1 (2004); Stetter v. R.J. Corman Derailment Servs., L.L.C., 125 Ohio St. 3d 280, 2010-Ohio-1029, 927 N.E.2d 1092 (2010); Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007); Lavin v. Jordon, 16 S.W.3d 362 (Tenn. 2000); Gallagher Headquarters Ranch Development, Ltd. v. City of San Antonio, 269 S.W.3d 628 (Tex. App. San Antonio 2008); Jackson v. Mateus, 2003 UT 18, 70 P.3d 78 (Utah 2003); MNC Credit Corp. v. Sickels, 255 Va. 314, 497 S.E.2d 331 (1998); State v. Dow, 168 Wash. 2d 243, 227 P.3d 1278 (2010); Dairyland Ins. Co. v. Conley, 218 W. Va. 252, 624 S.E.2d 599 (2005); Houle v. School Dist. of Ashland, 267 Wis. 2d 708, 2003 WI App 214, 671 N.W.2d 395 (Ct. App. 2003); Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).

While the General Assembly has authority to enact statutes that override the common law, local governments have no such authority to enact ordinances that override the common law.

McKinney v. H.M.K.G. & C., Inc., 123 S.W.3d 274 (Mo. Ct. App. W.D. 2003).

Where it is apparent that the legislature has made a value judgment with respect to certain behavior, it follows that the legislature intended to abrogate to that extent the common law.

Collins v. Com., 57 Va. App. 355, 702 S.E.2d 267 (2010).

As to when a statute will be interpreted as abrogating the common law, see Am. Jur. 2d, Statutes § 101.

5 Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Marketing Ass'n, 276 U.S. 71, 48 S. Ct. 291, 72 L. Ed. 473 (1928); Louis Pizitz Dry Goods Co. v. Yeldell, 274 U.S. 112, 47 S. Ct. 509, 71 L. Ed. 952, 51 A.L.R. 1376 (1927); West v. State of Louisiana, 194 U.S. 258, 24 S. Ct. 650, 48 L. Ed. 965 (1904) (overruled in part on other grounds by, Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965)); Pehle v. Farm Bureau Life Ins. Co., Inc., 397 F.3d 897 (10th Cir. 2005) (applying Wyoming law).

Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc., 190 Cal. App. 4th 1502, 119 Cal. Rptr. 3d 529 (6th Dist. 2010); Union Pacific R. Co. v. Martin, 209 P.3d 185 (Colo. 2009); State v. McCoy, 94 Idaho 236, 486 P.2d 247 (1971); Sandholm v. Kuecker, 405 Ill. App. 3d 835, 347 Ill. Dec. 341, 942 N.E.2d 544 (2d Dist. 2010), appeal allowed, 239 Ill. 2d 589, 348 Ill. Dec. 199, 943 N.E.2d 1109 (2011); Martin v. Richey, 711 N.E.2d 1273 (Ind. 1999); Strout v. Burgess, 144 Me. 263, 68 A.2d 241, 12 A.L.R.2d 939 (1949); John Hopkins Hosp. v. Correia, 405 Md. 509, 954 A.2d 1073 (2008); People v. Grand Trunk Western R. Co., 3 Mich. App. 242, 142 N.W.2d 54 (1966); Cummings v. Illinois Cent. R. Co., 364 Mo. 868, 269 S.W.2d 111, 47 A.L.R.2d 513 (1954); In re Estate of Sharek, 156 N.H. 28, 930 A.2d 388 (2007); Faber v. Creswick, 31 N.J. 234, 156 A.2d 252, 78 A.L.R.2d 1230 (1959); State Highway Commission v. Southern Union Gas Co., 65 N.M. 84, 332 P.2d 1007, 75 A.L.R.2d 408 (1958) (overruled in part on other grounds by, State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961)); Rhyne v. K-Mart Corp., 358 N.C. 160, 594 S.E.2d 1 (2004); Kaminski v. Metal & Wire Prods. Co., 125 Ohio St. 3d 250, 2010-Ohio-1027, 927 N.E.2d 1066 (2010); Karson v. Oregon Liquor Control Com'n, 189 Or. App. 223, 74 P.3d 1163 (2003); Cleveland v. BDL Enterprises, Inc., 2003 SD 54, 663 N.W.2d 212 (S.D. 2003); Montgomery ex rel. Montgomery v.

Kali Orexi, LLC, 303 S.W.3d 281 (Tenn. Ct. App. 2009), appeal denied, (Oct. 19, 2009); Shea v. Olson, 185 Wash. 143, 53 P.2d 615, 111 A.L.R. 998 (1936), adhered to on reh'g en banc, 186 Wash. 700, 59 P.2d 1183 (1936); Perry v. Twentieth St. Bank, 157 W. Va. 963, 206 S.E.2d 421 (1974).

When the legislature statutorily supplants a remedy provided by common law, subsequent restriction or abrogation of that protected remedy must be given an adequate substitute, or a quid pro quo; such changes are constitutional if the changes are reasonably necessary in the public interest to promote the general welfare of the people of the state, and the legislature provides an adequate substitute remedy to replace the remedy which has been restricted. Bland v. Scott, 279 Kan. 962, 112 P.3d 941, 198 Ed. Law Rep. 721 (2005).

A statutory provision authorized by the Constitution always supersedes the common law.

Green v. Lisa Frank, Inc., 221 Ariz. 138, 211 P.3d 16 (Ct. App. Div. 2 2009), review denied, (June 1, 2009).

The United States Constitution does not forbid the creation of new rights or the abolition of old ones recognized by the common law, in order to attain a permissible legislative object. Silver v. Silver, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221, 65 A.L.R. 939 (1929).

Neither the state nor the Federal Constitution prohibits the General Assembly from modifying common-law rights. Denver & R.G.W.R. Co. v. Marty, 143 Colo. 496, 353 P.2d 1095, 88 A.L.R.2d 1370 (1960).

6 Dill v. State, 24 Md. App. 695, 332 A.2d 690 (1975).

7 McKinster v. Sager, 163 Ind. 671, 72 N.E. 854 (1904).

8 Am. Jur. 2d, Actions § 52.

9 Smith v. Guest, 16 A.3d 920 (Del. 2011).

10 Zdrojewski v. Murphy, 254 Mich. App. 50, 657 N.W.2d 721 (2002).

11 Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483 (2009).

12 DeLoach v. Elliott, 289 Ga. 319, 710 S.E.2d 763 (2011); McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 135 P.3d 756 (2006); Pennock v. Lenzi, 882 A.2d 1057 (Pa. Commw. Ct. 2005); Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).

13 Waffle House, Inc. v. Williams, 313 S.W.3d 796 (Tex. 2010).

A statute preempts a common law claim by specifically adopting a limitation or prohibition on a claim or by comprehensively addressing a particular area of law such that it displaces the common law. Daniels v. Gamma West Brachytherapy, LLC, 2009 UT 66, 221 P.3d 256 (Utah 2009).

14 Waffle House, Inc. v. Williams, 313 S.W.3d 796 (Tex. 2010).

15 HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927 (8th Cir. 2007).(applying Iowa law); State v. Cameron, 113 P.3d 687 (Alaska Ct. App. 2005), judgment rev'd on other grounds, 171 P.3d 1154 (Alaska 2007); Pleak v. Entrada Property Owners' Ass'n, 207 Ariz. 418, 87 P.3d 831 (2004); Robbins v. People, 107 P.3d 384 (Colo. 2005); State v. Torres, 151 Wash. App. 378, 212 P.3d 573 (Div. 1 2009), review denied, 167 Wash. 2d 1019, 224 P.3d 773 (2010).

To the extent that statutes, by their terms and necessary implications, and the common law are not repugnant, they coexist and will be given effect. Clark v. Luvel Dairy Products, Inc., 731 So. 2d 1098 (Miss. 1998).

The legislature is presumed to enact legislation that renders the body of the law coherent and consistent, rather than contradictory and inconsistent, and courts must discharge their responsibility, in case-by-case adjudication, to assure that the body of the law, both common and statutory, remains coherent and consistent. Ireland v. Ireland, 246 Conn. 413, 717 A.2d 676 (1998).

16 In re Valente, 360 F.3d 256 (1st Cir. 2004); Young v. Beck, 227 Ariz. 1, 251 P.3d 380 (2011); Shamlin v. Quadrangle Enterprises, Inc., 101 Ark. App. 164, 272 S.W.3d 128 (2008); Clancy Systems Intern., Inc. v. Salazar, 177 P.3d 1235, 65 U.C.C. Rep. Serv. 2d 137 (Colo. 2008); Lee v. Detroit Medical Center, 285 Mich. App. 51, 775 N.W.2d 326 (2009), appeal denied, 485 Mich. 1121, 779 N.W.2d 501 (2010) and appeal denied, 485 Mich. 1121, 779 N.W.2d 502 (2010); Shaw Acquisition Co. v. Bank of Elk River, 639 N.W.2d 873 (Minn. 2002); Jenkins v. Mehra, 281 Va. 37, 704 S.E.2d 577 (2011).

In order to abrogate a common law principle, a statute must speak directly to the question addressed by the common law. Matar v. Dichter, 563 F.3d 9 (2d Cir. 2009).

17 Pasquantino v. U.S., 544 U.S. 349, 125 S. Ct. 1766, 161 L. Ed. 2d 619, 4 A.L.R. Fed. 2d 747 (2005); Israel v. Chabra, 537 F.3d 86 (2d Cir. 2008), certified question accepted, 11 N.Y.3d 744, 864 N.Y.S.2d 385, 894 N.E.2d 649 (2008) and certified question answered, 12 N.Y.3d 158, 878 N.Y.S.2d 646, 906 N.E.2d 374 (2009); Ly v. Nystrom, 615 N.W.2d 302 (Minn. 2000).

18 People v. Ceja, 49 Cal. 4th 1, 108 Cal. Rptr. 3d 568, 229 P.3d 995 (2010); Clark v. Commissioner of Correction, 281 Conn. 380, 917 A.2d 1 (2007); A.W. Financial Services, S.A. v. Empire Resources, Inc., 981 A.2d 1114 (Del. 2009); Dahlin v. Kroening, 796 N.W.2d 503 (Minn. 2011); Cecere v. Loon Mountain Recreation Corp., 155 N.H. 289, 923 A.2d 198 (2007); San Juan Agr. Water Users Ass'n v. KNME-TV, 2011-NMSC-011, 2011 WL 1261374 (N.M. 2011); Williams v. Spitzer Autoworld Canton, L.L.C., 122 Ohio St. 3d 546, 2009-Ohio-3554, 913 N.E.2d 410, 69 U.C.C. Rep. Serv. 2d 545 (2009); Rogers v. Meiser, 2003 OK 6, 68 P.3d 967 (Okla. 2003); Jenkins v. Mehra, 281 Va. 37, 704 S.E.2d 577 (2011); Sorensen v. State Farm Automobile Ins. Co., 2010 WY 101, 234 P.3d 1233 (Wyo. 2010).

There is a presumption against a change in the common law that is especially strong where the change would be contrary to public policy. In re Will of Kipke, 645 N.W.2d 727 (Minn. Ct. App. 2002).

As a general principle, the rules of common law are not to be changed by doubtful implication; however, where the implication is obvious it cannot be ignored.

Twin Lakes Canal Co. v. Choules, 151 Idaho 214, 254 P.3d 1210 (2011).

Common law rules not in conflict with the Penal Code are retained. State v. Courchesne, 296 Conn. 622, 998 A.2d 1 (2010).

19 Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483 (2009); Shamlin v. Quadrangle Enterprises, Inc., 101 Ark. App. 164, 272 S.W.3d 128 (2008); Copley Press, Inc. v. Superior Court, 39 Cal. 4th 1272, 48 Cal. Rptr. 3d 183, 141 P.3d 288 (2006); Board of County Comr's of Neosho County ex rel. Bd. of Trustees, Neosho Memorial Hosp. v. Central Air Conditioning Co., Inc., 235 Kan. 977, 683 P.2d 1282 (1984); Com. ex rel. Cowan v. Wilkinson, 828 S.W.2d 610, 74 Ed. Law Rep. 993 (Ky. 1992) (overruled on other grounds by, Com. ex rel. Conway v. Thompson, 300 S.W.3d 152 (Ky. 2009)); Suter v. Stuckey, 402 Md. 211, 935 A.2d 731 (2007); Trentadue v. Buckler Lawn Sprinkler, 479 Mich. 378, 738 N.W.2d 664 (2007); Sims v. Sims, 1996-NMSC-078, 122 N.M. 618, 930 P.2d 153 (1996); Martin v. Rath, 1999 ND 31, 589 N.W.2d 896 (N.D. 1999); Hohm v. City of Rapid City, 2008 SD 65, 753 N.W.2d 895 (S.D. 2008); Lavin v. Jordon, 16 S.W.3d 362 (Tenn. 2000); Collins v. Tex Mall, L.P., 297 S.W.3d 409 (Tex. App. Fort Worth 2009); Ball v. State ex rel. Wyo. Workers' Safety and Compensation Div., 2010 WY 128, 239 P.3d 621 (Wyo. 2010).

A specific statutory provision supersedes a contrary common law principle.

ETDH Associates v. Waterfall Ventures, LLC, 999 A.2d 22 (D.C. 2010).

Statutes take precedence where there is any inconsistency or conflict with the unwritten law. Schlattman v. Stone, 511 P.2d 959 (Wyo. 1973).

A right created by statute cannot be defeated by the application of a common-law principle. Williams v. Eastern Coal Corp., 952 S.W.2d 696 (Ky. 1997).

20 Carr v. Carr, 120 N.J. 336, 576 A.2d 872 (1990).

21 Tucson Gas & Elec. Co. v. Schantz, 5 Ariz. App. 511, 428 P.2d 686 (1967).

22 HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927 (8th Cir. 2007) (applying Iowa law); Dominguez v. State, 181 P.3d 1111 (Alaska Ct. App. 2008); Tucson Gas & Elec. Co. v. Schantz, 5 Ariz. App. 511, 428 P.2d 686 (1967); Nicholas v. Baldwin Piano Co., 71 Ind. App. 209, 123 N.E. 226 (1919); Boston Ice Co. v. Boston & M. R. R., 77 N.H. 6, 86 A. 356 (1913); Burnett v. Myers, 42 S.D. 233, 173 N.W. 730 (1919).

An abrogation of the common law will be implied where the two laws are so repugnant that both in reason may not stand. Caesars Riverboat Casino, LLC v. Kephart, 934 N.E.2d 1120 (Ind. 2010); Rogers v. Meiser, 2003 OK 6, 68 P.3d 967 (Okla. 2003).

Common law remedies are not appropriate where their application would eviscerate the force of the provisions of a statute. Location Realty, Inc. v. Colaccino, 287 Conn. 706, 949 A.2d 1189 (2008).

23 B.F.L. v. State, 233 P.3d 1118 (Alaska Ct. App. 2010); Santa Fe Custom Shutters & Doors, Inc. v. Home Depot U.S.A., Inc., 137 N.M. 524, 2005-NMCA-051, 113 P.3d 347, 58 U.C.C. Rep. Serv. 2d 144 (Ct. App. 2005); Banko v. Weber, 9 A.D.2d 720, 192 N.Y.S.2d 260 (4th Dep't 1959), order aff'd, 7 N.Y.2d 758, 193 N.Y.S.2d 670, 162 N.E.2d 750 (1959); State v. Ramirez, 156 N.C. App. 249, 576 S.E.2d 714 (2003).

24 McDonald v. Antelope Valley Community College Dist., 45 Cal. 4th 88, 84 Cal. Rptr. 3d 734, 194 P.3d 1026, 237 Ed. Law Rep. 794 (2008); A.W. Financial Services, S.A. v. Empire Resources, Inc., 981 A.2d 1114 (Del. 2009) (but fair repugnance required)

Hill v. Kentucky Lottery Corp., 327 S.W.3d 412 (Ky. 2010), as modified on denial of reh'g, (Dec. 16, 2010); Suter v. Stuckey, 402 Md. 211, 935 A.2d 731 (2007); In re Taylor's Estate, 61 Nev. 68, 114 P.2d 1086, 135 A.L.R. 580 (1941); Sternlicht v. Sternlicht, 583 Pa. 149, 876 A.2d 904 (2005).

A single comprehensive statutory scheme may supersede one common law doctrine without superseding another common law doctrine. A.W. Financial Services, S.A. v. Empire Resources, Inc., 981 A.2d 1114 (Del. 2009).

Where a statute deals with an entire subject matter, it is generally construed as abrogating the common law relating to that subject. State v. Salafia, 29 Conn. Supp. 305, 284 A.2d 576 (Super. Ct. 1971).

Where a statute covers the whole subject matter, the abrogation of the common law on the same subject will necessarily be implied. Schlattman v. Stone, 511 P.2d 959 (Wyo. 1973).

25 Tucson Gas & Elec. Co. v. Schantz, 5 Ariz. App. 511, 428 P.2d 686 (1967).

26 McDonald v. Antelope Valley Community College Dist., 45 Cal. 4th 88, 84 Cal. Rptr. 3d 734, 194 P.3d 1026, 237 Ed. Law Rep. 794 (2008); Caesars Riverboat Casino, LLC v. Kephart, 934 N.E.2d 1120 (Ind. 2010); Genies v. State, 196 Md. App. 590, 10 A.3d 854 (2010), cert. granted, 418 Md. 586, 16 A.3d 977 (2011); Kyser v. Township, 486 Mich. 514, 786 N.W.2d 543 (2010); Rogers v. Meiser, 2003 OK 6, 68 P.3d 967 (Okla. 2003); Gottling v. P.R. Inc., 2002 UT 95, 61 P.3d 989 (Utah 2002).

27 Capitol Records, Inc. v. Naxos of America, Inc., 372 F.3d 471 (2d Cir. 2004), certified question accepted, 3 N.Y.3d 666, 784 N.Y.S.2d 3, 817 N.E.2d 820 (2004) and certified question answered, 4 N.Y.3d 540, 797 N.Y.S.2d 352, 830 N.E.2d 250 (2005); Fullerton v. Florida Medical Ass'n, Inc., 938 So. 2d 587 (Fla. Dist. Ct. App. 1st Dist. 2006); Blount v. Stroud, 232 Ill. 2d 302, 328 Ill. Dec. 239, 904 N.E.2d 1 (2009); Sims v. Town of New Chicago, 842 N.E.2d 830 (Ind. Ct. App. 2006); In re P.R.G., 45 Kan. App. 2d 73, 244 P.3d 279 (2010); Brown Sprinkler Corp. v. Somerset-Pulaski County Development Foundation, Inc., 335 S.W.3d 455 (Ky. Ct. App. 2010), review denied, (Apr. 13, 2011).

Lockshin v. Semsker, 412 Md. 257, 987 A.2d 18 (2010); Cavadi v. DeYeso, 458 Mass. 615, 941 N.E.2d 23 (2011); Isles Wellness, Inc. v. Progressive Northern Ins. Co., 703 N.W.2d 513 (Minn. 2005); Raster v. Ameristar Casinos, Inc., 280 S.W.3d 120 (Mo. Ct. App. E.D. 2009), reh'g and/or transfer denied, (Apr. 6, 2009) and transfer denied, (May 5, 2009); Warnig v. Atlantic County Special Services, 363 N.J. Super. 563, 833 A.2d 1098 (App. Div. 2003); San Juan Agr. Water Users Ass'n v. KNME-TV, 2011-NMSC-011, 2011 WL 1261374 (N.M. 2011); Llanos v. Shell Oil Co., 55 A.D.3d 796, 866 N.Y.S.2d 309 (2d Dep't 2008); Watson v. Gibson Capital, L.L.C., 2008 OK 56, 187 P.3d 735 (Okla. 2008); Vine v. Com., State Employees' Retirement Bd., 607 Pa. 648, 9 A.3d 1150 (2010); Montgomery ex rel. Montgomery v. Kali Orexi, LLC, 303 S.W.3d 281 (Tenn. Ct. App. 2009), appeal denied, (Oct. 19, 2009); OLP, L.L.C. v. Burningham, 2009 UT 75, 225 P.3d 177 (Utah 2009); Schmidt v. Northern States Power Co., 2007 WI 136, 305 Wis. 2d 538, 742 N.W.2d 294 (2007); Briefing.com v. Jones, 2006 WY 16, 126 P.3d 928 (Wyo. 2006).

A federal statute enacted after a common law doctrine has been established will not abrogate the federal common law rule unless the statute speaks directly to the question addressed by common law. In re Hanford Nuclear Reservation Litigation, 534 F.3d 986 (9th Cir. 2008).

Courts are hesitant to recognize an abrogation or derogation from the common law absent clear evidence of the legislature's intent to deviate from the common law. Potter v. Washington State Patrol, 165 Wash. 2d 67, 196 P.3d 691 (2008).

Courts recognize only those alterations of the common law that are clearly expressed in the language of a statute because the traditional principles of justice on which the common law is founded should be perpetuated. State v. Courchesne, 296 Conn. 622, 998 A.2d 1 (2010).

28 Soraghan v. Mt. Cranmore Ski Resort, Inc., 152 N.H. 399, 881 A.2d 693 (2005); Potter v. Washington State Patrol, 165 Wash. 2d 67, 196 P.3d 691 (2008).

29 Carlton at the Lake, Inc. v. Barber, 401 Ill. App. 3d 528, 340 Ill. Dec. 669, 928 N.E.2d 1266 (1st Dist. 2010).

Effectuation of repeal of the common law does not require the use of some particular word or words; it requires instead plain, unambiguous language making it clear that is what was intended. Merrill v. Jansma, 2004 WY 26, 86 P.3d 270 (Wyo. 2004).

The common law is not to be changed by doubtful implication, or be overturned except by clear and unambiguous statutory language. Batchelder v. Realty Resources Hospitality, LLC, 2007 ME 17, 914 A.2d 1116 (Me. 2007).

30 Gossels v. Fleet Nat. Bank, 453 Mass. 366, 902 N.E.2d 370, 68 U.C.C. Rep. Serv. 2d 217 (2009); Mandolfo v. Mandolfo, 281 Neb. 443, 796 N.W.2d 603, 74 U.C.C. Rep. Serv. 2d 547 (2011).

As to the general provisions of the Uniform Commercial Code, including its application, construction, and interpretation, see Am. Jur. 2d, Commercial Code §§ 1 et seq.

31 Sparks v. Total Body Essential Nutrition, Inc., 27 So. 3d 489, 69 U.C.C. Rep. Serv. 2d 675 (Ala. 2009); Cub Cadet Corp. v. Mopec, Inc., 78 S.W.3d 205, 47 U.C.C. Rep. Serv. 2d 1498 (Mo. Ct. App. W.D. 2002); Williams v. Gillespie, 74 U.C.C. Rep. Serv. 2d 509 (Tex. App. Texarkana 2011), reh'g overruled, (July 6, 2011).

The common law will not supplement the Uniform Commercial Code (UCC) when it is displaced by particular provisions of the UCC. Mandolfo v. Mandolfo, 281 Neb. 443, 796 N.W.2d 603, 74 U.C.C. Rep. Serv. 2d 547 (2011).

Displacement of the common law occurs when one or more particular provisions of the U.C.C. comprehensively address a particular subject. Hitachi Electronic Devices (USA), Inc. v. Platinum Technologies, Inc., 366 S.C. 163, 621 S.E.2d 38, 57 U.C.C. Rep. Serv. 2d 883 (2005).

32 Shelby Resources, LLC v. Wells Fargo Bank, 160 P.3d 387, 62 U.C.C. Rep. Serv. 2d 344 (Colo. App. 2007).

33 Sellman v. Haddock, 62 N.M. 391, 310 P.2d 1045 (1957) (overruled on other grounds by, Safeco Ins. Co. of America v. U.S. Fidelity & Guar. Co., 101 N.M. 148, 679 P.2d 816 (1984)), holding that rules of court as to parties, taken from earlier statutory provisions, fully cover the matter of parties to a civil suit.

34 Taylor v. State, 969 So. 2d 583 (Fla. Dist. Ct. App. 4th Dist. 2007).

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Common Law
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